CHAPTER 16: RECYCLABLE MATERIALS (RECYCLABLE HAZARDOUS WASTES)

Chapter Overview: This chapter establishes requirements applicable to recyclable materials (i.e., recyclable hazardous wastes). This chapter is based: on 40 CFR section 261.6; on Subparts C, D, E, F, and G of 40 CFR Part 266; and on existing Article 12, Chapter 30, Division 4, Title 22, CCR. Proposed Chapter 16 consists of seven articles (Articles 1 through 9 with Articles 3 and 5 reserved). The chapter does all of the following:

Identifies hazardous wastes which the Department has found to be economically and technologically feasible to recycle;

Sets forth procedures, whereby generators who dispose of recyclable materials can substantiate for the Department why they did not recycle the materials;

Establishes requirements for generators, transporters and recyclers of hazardous wastes in general;

Establishes requirements for generators, for transporters and/or for persons who handle certain recyclable materials in specific ways, as listed below:

Hazardous wastes and certain used oils regulated as hazardous waste fuels;

Other used oils;

Spent lead-acid storage batteries;

Recyclable materials used for agricultural purposes; and

Waste elemental mercury.

Federal requirements for recyclable materials in 40 CFR section 261.6, and in Subparts C, D, E, F, and G, of 40 CFR Part 266, are generally less stringent than present corresponding state requirements and are generally not being adopted as part of proposed Chapter 16 as a result. For example, federal regulations do not apply permit requirements to recycling facilities that recycle, but do not store, recyclable materials (40 CFR section 261.6(c)(1)). State regulations provide no such categorical exemption. Similarly, federal regulations do not apply to spent lead-acid storage batteries, except when the batteries are stored prior to reclamation (40 CFR section 266.80). State regulations applicable to such batteries are considerably more stringent (section 66822, CCR). For these and other reasons, Subpart D of 40 CFR Part 266, is being extensively modified, and Subparts E, F, and G, of 40 CFR Part 266, are being deleted entirely from the proposed regulations. Subpart C of 40 CFR Part 266 was extensively modified as part of the original proposed regulations and was modified again as part of the first noticed

revisions. However, the multiple modifications to Subpart C are being deleted entirely as part of the second noticed revisions for reasons set forth in the discussion of proposed Article 3 of proposed Chapter 16, elsewhere in this "Statement of Reasons".

Changes in the language of existing Article 12, CCR, that is being retained are being made primarily to conform with the format of the proposed regulations. Changes in the language of existing 40 CFR Part 266, that is being retained are being made primarily for clarification and for conformance with the format of the proposed regulations. If 40 CFR Part 266, language and Article 12, CCR, language are similar, 40 CFR language is being used whenever possible.

ARTICLE 1: GENERAL:

Article Overview: This article consists of two existing CCR sections which, respectively, set forth a list of hazardous wastes which the Department has determined to be economically and technologically feasible to recycle, and establish procedures by which generators can substantiate for the Department why they disposed of Department-listed recyclable hazardous wastes (i.e., recyclable materials). This article implements Health and Safety Code section 25175, which (among other actions) authorized the Department to adopt the regulations in proposed Article 1 and empowered the Department to levy specified monetary penalties on those persons who cannot substantiate to the Department's satisfaction why they disposed of their Department-listed recyclable materials. Proposed Article 1 has no federal counterpart.

Section 66266.1: This section is nearly identical to existing section 66763, CCR, except for the minor modifications (listed below) needed to conform with the format of the proposed regulations. This section implements Health and Safety Code section 25175, which essentially authorizes the Department to require persons who dispose of recyclable hazardous wastes to explain to the Department in writing why they did not recycle them. Section 66763, CCR, includes the Department's requirements for the submission of explanatory statements and for the contents of the statements. The minor modifications to section 66763, CCR, in new section 66266.1 are the following:

In section 66266.1(a), the reference to existing section 66796, CCR (containing the Department's list of recyclable hazardous wastes), is being changed to section "66266.2" to reflect the new number of section 66796, CCR.

Also in section 66266.1(a), the phrase "an entity specified in section 66160" is being deleted and the words "a person" are being added, because existing section 66160, CCR, refers to the definition of "person" which is retained in new section 66260.10, CCR. Thus, the definition does not need to be referenced in the proposed regulations and did not need to be referenced in the existing regulations. The change is being made to simplify, and therefore clarify, the existing regulation.

At the end of section 66266.1, the "authority cited" and "reference" section numbers are being revised to correct errors of omission or sequence in existing section 66763, CCR.

Section 66266.2: This section is identical to existing section 66796, CCR, except for the minor modifications (discussed below) needed to conform with the format of the proposed regulations. This section implements Health and Safety Code

section 25175, which essentially requires the Department to list specific hazardous wastes that the Department finds to be economically and technologically feasible to recycle. Section 66796, CCR, sets forth the Department's list of such recyclable hazardous wastes and examples of potential recycling methods or uses for them. The minor modifications to section 66796, CCR, in new section 66266.2 are the following:

In sections 66266.2(b) and (b)(2)(A), a semicolon is being changed to a colon and a period is being changed to a semicolon, respectively (as shown), to correct punctuation errors in existing section 66796, CCR.

In section 66266.2(b)(7)(A), "California Administrative Code" is being changed to the abbreviation for California Code of Regulations (i.e., CCR) to conform with the state's renaming of all the titles in state regulations.

In section 66266.2(b)(7)(A) also, the reference to section 3143 of Title 3, CCR is being moved to conform with the format of the proposed regulations.

At the end of section 66266.2, the "authority cited" and "reference" section numbers are being revised to correct errors of omission in existing section 66796, CCR.

ARTICLE 2: GENERATOR, TRANSPORTER, AND FACILITY OPERATOR REQUIREMENTS:

Article Overview: This article consists of existing sections 66798, 66800, 66802, 66804, 66806, 66808, 66810, 66812, and 66814, CCR, which address requirements for generators, transporters and operators of facilities that manage recyclable materials in general. The requirements include special permit provisions for resource recovery facilities, particularly for those that recycle hazardous wastes which are not subject to federal regulation under RCRA. The article also provides some clarifications of, and indexes to, the other requirements in proposed Chapter 16. Proposed Article 2 is somewhat similar to 40 CFR sections 261.6(b) and (c), (discussed elsewhere in this "Statement of Reasons"), except that (among other exceptions) the general federal exemption from permit requirements for the recycling process itself does not apply in the existing CCR sections cited above or in proposed Article 2.

Section 66266.3: This section is nearly identical to existing section 66798, CCR, except for the minor modifications (listed below) needed to conform with the format of the proposed regulations. This section can be considered to make more specific Health and Safety Code section 25143.2(a), which states that recyclable materials are regulated by the Department as hazardous wastes, with specified exceptions. Section 66798, CCR, states that generators of recyclable materials are regulated by the Department as generators of hazardous wastes, with specified exceptions, and provides an index to the remainder of the Department's regulations applicable to generators of recyclable materials. The minor modifications to section 66798, CCR, in new section 66266.3 are the following:

In section 66266.3(a), "chapter" is being changed to "division" to reflect the structure of the proposed regulations.

In sections 66266.3(a)(1) and (a)(2), references to section numbers are being changed, or are being changed to the new article numbers in proposed Chapter 16 which include them, in order to conform with the renumbering of the proposed regulations. To simplify the regulation, existing references that included Title 22 section numbers and no article numbers are being shortened by deleting phrases such as "of this chapter", because the section numbers are unique and thus need no further description.

In section 66266.3(a)(2) the cross-reference to proposed Article 3 is being deleted from the original proposed regulations as part of the second noticed revisions to reflect the deletion of that article for reasons set forth in the discussion of proposed Article 3 elsewhere in this "Statement of Reasons". The comma following the cross-reference to

proposed Article 4 is being deleted to conform with the deletion of the cross-reference to proposed Article 3.

At the end of section 66266.3, the "authority cited" and "reference" section numbers are being revised to correct errors in existing section 66798, CCR, or to conform with statutory changes (e.g., Health and Safety Code sections 25143 and 25143.2) that occurred after section 66798, CCR, was adopted in 1985.

Section 66266.4: This section is nearly identical to existing section 66800, CCR, except for the minor modifications (listed below) needed to conform with the format of the proposed regulations. This section can be considered to make more specific Health and Safety Code section 25143.2(a), which states that recyclable materials are regulated by the Department as hazardous wastes, with specified exceptions. Section 66800, CCR, states that transporters of recyclable materials are regulated the same as transporters of hazardous wastes, with specified exceptions, and provides an index to the remainder of the Department's regulations applicable to transporters of recyclable materials. The minor modifications to section 66800, CCR, in new section 66266.4 are the following:

In section 66266.4(a), "chapter" is being changed to "division" to reflect the structure of the proposed regulations.

In sections 66266.4(a)(1) and (a)(2), references to section numbers are being changed, or are being changed to the new article numbers in proposed Chapter 16 which include them, in order to conform with the renumbering of the proposed regulations. To simplify the regulation, existing references that included Title 22 section numbers and no article numbers are being shortened by deleting phrases such as "of this chapter", because the section numbers are unique and thus need no further description.

In section 66266.4(a)(2) the cross-reference to proposed Article 3 is being deleted from the original proposed regulations as part of the second noticed revisions to reflect the deletion of that article for reasons set forth in the discussion of proposed Article 3 elsewhere in this "Statement of Reasons". The comma following the cross-reference to proposed Article 4 is being deleted to conform with the deletion of the cross-reference to proposed Article 3.

At the end of section 66266.4, the "authority cited" and "reference" section numbers are being revised to correct errors in existing section 66800, CCR, or to conform with statutory changes (e.g., Health and Safety Code section 25143.2) that occurred after section 66800, CCR, was adopted in 1985.

Section 66266.5: This section is being modified from existing section 66802, CCR, to ensure federal equivalence and to conform with the format of the proposed regulations. This section can be considered to make more specific Health and Safety Code section 25143.2(a), which states that recyclable materials are regulated by the Department as hazardous wastes, with specified exceptions. Section 66802, CCR, states that operators of resource recovery facilities are regulated as operators of hazardous waste facilities, with specified exceptions, and provides an index to the remainder of the Department's regulations applicable to facility operators who manage recyclable materials. The modifications to section 66802, CCR, in new section 66266.5 are the following:

In sections 66266.5(a), (a)(2), and (a)(4), "chapter" is being changed to "division" to reflect the structure of the proposed regulations.

In sections 66266.5(a)(1) through (a)(4), existing references that included Title 22 section numbers and no article numbers are being shortened by deleting phrases such as "of this chapter", because the section numbers are unique and thus need no further description. These changes should simplify the regulation.

In sections 66266.5(a)(1) through (a)(5), referenced section numbers are being changed (or are being changed to the new article numbers in proposed Chapter 16 which include them) to conform with the renumbering of the proposed regulations.

In section 66266.5(a)(3), the phrase "along public access roads and in storage areas", the first reference to section "66525(f) and Section 66535(f)", and the word "respectively" dealing with warning signs are being deleted, because they address issues and sections that were deleted or modified from the Department's existing regulations more than three years ago. The subject items were not themselves deleted or modified at the same time, inadvertently. Thus, the proposed changes clarify the regulation by deleting obsolete information and references. The reference to new section 66264.14(c) which discusses warning signs is being substituted for the deleted first reference to sections 66525(f) and 66535(f), CCR.

Also in section 66266.5(a)(3), the phrase "in the opinion of the Department, is equivalent to, or less restrictive than, the wording specified in Section 66525(f) and Section 66535(f) of this chapter" is being deleted and the phrase "states, at a minimum, `Danger -- Unauthorized Personnel Keep Out'" is being added. These changes are being made to prevent the Department from allowing operators of resource recovery facilities to use wording on warning signs that is less stringent than corresponding wording required by USEPA. Thus, the new sentence ensures that the Department's regulations will be

consistent with USEPA regulations in (for example) 40 CFR section 264.14(c) on this particular issue, as required by Health and Safety Code section 25159 et seq. The actual text of the added phrase is being changed from the text of the original proposed regulations as part of the first noticed revisions, in response to a comment received about the original proposed regulations (Comment No. A179).

In section 66266.5(a)(5), the phrase "a recyclable material in its existing state," and the word "such" and a comma are being deleted as redundant, and the word "recyclable" is being added for clarification. Also, the term "Resource Recovery Facility" is being changed to lower case to conform with other subsections of section 66266.5.

At the end of section 66266.5, the "authority cited" and "reference" section numbers are being revised to correct errors in existing section 66802, CCR, or to conform with statutory changes (e.g., Health and Safety Code sections 25143 and 25143.2) that occurred after section 66802, CCR, was adopted in 1985.

Section 66266.6: This section is being modified from existing section 66804, CCR, to add a cross-reference and to conform with the format of existing federal regulations and with the format of the proposed regulations. This section clarifies existing state hazardous waste control laws and regulations (administered by the Department) by identifying materials that could be construed to be Department-regulated hazardous wastes but that the Department either chose not to regulate or never intended to regulate. Section 66804, CCR, currently identifies four types of such materials which, in conjunction with applicable definitions cited, are exempt from Department regulation as hazardous wastes. The modifications to section 66804, CCR, in new section 66266.6 are as follows:

In section 66266.6(a), "chapter" is being changed to "division" to conform with the format of the proposed regulations.

In section 66266.6(a)(1), the references to the Food and Agricultural Code are being reordered to reflect the format of the proposed regulations, and the word "and" is being deleted and the word "or" is being added between the two referenced section numbers. The latter change is being made, because the two section numbers separately refer to fertilizers and animal foods; materials are unlikely to be used for both purposes, so the change will clarify the regulation.

Also in section 66266.6(a)(1), a phrase is being added, stating that the existing exemption (in section 66804(a)(1), CCR) from Department regulation for agricultural products derived from hazardous wastes is limited to such products

derived from non-RCRA hazardous wastes at a Department-authorized (generally a Department-permitted) facility. Title 40 CFR section 266.20 requires products applied to land and derived from RCRA hazardous wastes at any facility to be regulated under specified circumstances, in conformance with federal regulations on "use constituting disposal". Thus, existing section 66804(a)(1) is being revised to conform with the more stringent federal regulations with respect to this issue.

In section 66266.6(a)(2), a referenced section number is being revised to conform with the format of the proposed regulations. To simplify the regulation, the reference is being shortened by deleting the phrase "of this chapter", because the section number is unique and thus needs no further description. A semicolon and the word "and" are being deleted to conform with the deletions of existing sections 66804(a)(2) and (a)(4), CCR, discussed below.

Also in section 66266.6(a)(2), existing section 66804(a)(3), CCR, is being renumbered to accommodate the changes discussed in the next paragraph (below) addressing new section 66266.6.

Existing sections 66804(a)(2) and (a)(4), CCR contain exemptions from state regulation that are being deleted in favor of essentially the same exemptions from federal regulation in 40 CFR sections 261.6(a)(3)(iv) and 261.4(d), respectively, which appear as new sections 66261.6(a)(3)(B) and 66261.4(d) of the proposed regulations. The Department generally does not intend to regulate as hazardous wastes, scrap metals and laboratory samples (the types of materials addressed in the subject sections), as specified.

At the end of section 66266.6, the "authority cited" section numbers are being revised either to correct errors in existing section 66804, CCR, or to conform with statutory changes (e.g., Health and Safety Code section 25143) that occurred after section 66804, CCR, was adopted in 1985.

<u>Section 66266.7</u>: This section is being modified from existing section 66806, CCR, to conform with other existing state regulations and with the format of the proposed regulations. The section essentially implements Health and Safety Code sections 25150(e) and 25170(i) (i.e., promotes recycling), primarily by offering qualified recyclers of hazardous waste the conditional option of obtaining a "RCRA equivalent" permit which (among other actions) designates their facilities "resource recovery", instead of "hazardous waste", facilities, a public-relations benefit of considerable significance to them with respect to their customers and neighbors. The modifications to section 66806, CCR, in new section 66266.7 are the following:

In sections 66266.7(a)(1), (b)(1)(C), (b)(2)(D)1., (b)(2)(E), (c) and (d), "chapter" is being changed to "division" to conform with the format of the proposed regulations.

In sections 66266.7(a)(2) and (c)(3), references that included Title 22 section numbers and no article numbers are being shortened by deleting phrases such as "of this chapter", because the section numbers are unique and thus need no further description. These changes should simplify the regulation.
In sections 66266.7(a)(1), (a)(2), (b)(1)(C), (b)(2)(D)1., (b)(2)(E), (c), (c)(3), and (d), references to existing sections, articles, or their numbers in the CCR are being changed to conform with the format of the proposed regulations.

In section 66266.7(a)(1), the words "A ... an operation plan" are being deleted, and the words "Part A of the" and "Part B of the permit application" are being added to reflect changes that were made more than three years ago in existing state regulations, but were inadvertently omitted from section 66806, CCR. At that time, "permit application" and "operation plan" were changed to "Part A" and "Part B of the permit application", respectively, apparently everywhere else in the regulations.

In section 66266.7(a)(2), the phrase "and the operation plan" is being deleted, leaving only the reference to "the permit application" which consists of Parts A and B. (See preceding item for explanation.)

In section 66266.7(b)(1)(A), the words "Subtitle C of" were added to make the reference to RCRA clearer and more specific, since Subtitle C addresses federal hazardous waste control laws, and the reference is consistent with other references to RCRA in state hazardous waste control laws and regulations. Also, the references to the "United States Environmental Protection Agency" and to "Public Law 94-580... et seq.)." are being simplified to "USEPA" and "RCRA", respectively, to conform with the format of the proposed regulations.

In sections 66266.7(b)(2) and (b)(2)(E), the words "Handle or" and "handled or", respectively, are being deleted [with a conforming change in capitalization of the succeeding word in (b)(2)] from the original proposed regulations as part of the first noticed revisions, leaving only the terms "Manage" and "managed", respectively. These changes are being made to simplify and therefore clarify the regulation, because the term "management" as defined in section 66260.10 includes "handling".

In section 66266.7(b)(2)(D)2., a semicolon and the word "and" are being deleted to correct a typographical error in the existing regulation.

In section 66266.7(b)(2)(E), as part of the second noticed revisions, the second half of the compound sentence (commencing with "or hazardous wastes...") is being deleted entirely from the original proposed regulations as a response to a comment received about the original proposed regulations, and reiterated about the first noticed revisions (Comment Nos. A180 and 19BK). The Department concurs in part with the commentor that the deleted words could possibly be misinterpreted as allowing facilities otherwise subject to hazardous waste facility permit requirements (e.g., landfills) to qualify for resource recovery facility permits.

In section 66266.7(c)(2) the word "will" is being deleted from the original proposed regulations as part of the first noticed revisions, leaving the word "meet" unmodified, in response to a comment received about the original proposed regulations (Comment No. A181).

At the end of section 66266.7, the "authority cited" section numbers are being revised to correct errors in existing section 66806, CCR, or to conform with statutory changes (e.g., Health and Safety Code section 25143) that occurred after section 66806 was adopted in 1985.

Section 66266.8: This section is being modified from existing section 66808, CCR, to conform with other existing state regulations and with the format of the proposed regulations. This section essentially implements Health and Safety Code sections 25150(e) and 25170(i) (i.e., promotes recycling), by offering qualified recyclers of hazardous waste the option of designating their facilities "resource recovery", instead of "hazardous waste", facilities and by providing reduced permit application requirements for such recyclers. Wastes handled can only be those which are exempt from federal regulation, among other limitations, as specified. The modifications to section 66808, CCR, in new section 66266.8 are the following:

In sections 66266.8(a), (d)(3) and (d)(4), the word or words "handle or", "handle" and "handle", respectively, are being deleted from the original proposed regulations as part of the first noticed revisions, leaving only the term "manage" in all cases. These changes are being made to simplify and clarify the regulation, because the term "management" as defined in section 66266.10 includes "handling".

In sections 66266.8(a)(1), (b)(1), (b)(2) and (c), "chapter" is being changed to "division" to conform with the format of the proposed regulations.

In sections 66266.8(a), (a)(2) and (b)(2)(C), references that included Title 22 section numbers and no article numbers are being shortened by deleting phrases such as "of this chapter", because the section numbers are unique and thus need no further description. These changes should simplify the regulation.

In sections 66266.8(a), (a)(1), (a)(2), (b)(1), (b)(2), (b)(2)(C), (b)(2)(D), and (c), references to existing sections, articles, or their numbers in the CCR are being changed to conform with the format of the proposed regulations and with the changes discussed below.

In section 66266.8(a)(1), the words "A", "operation plan", and "has" are being deleted, and the words "Part A of the", "Part B of the permit application", and "have" are being added, respectively: to reflect changes that were made more than three years ago in existing state regulations, but were inadvertently omitted from section 66808, CCR; and to correct an existing grammatical error. At that time, "permit application" and "operation plan" were changed to "Part A" and "Part B of the permit application", respectively, apparently everywhere else in the regulations.

In section 66266.8(a)(2), the word "permit" is being added to be consistent with the changes described in the preceding paragraph.

In section 66266.8(b)(1), the word "An" is being deleted and the phrase "Part A of the permit" is being added, because in the limited context of the section, "application" means only one part of the two-part permit application. In this case, that part is the Part A. Thus, the changes are needed to conform with the changes being made in section 66266.8(a)(1), discussed above.

In section 66266.8(b)(2), the words "operation plan" are being deleted and the words "Part B of the permit application" are being added to conform with the changes being made in section 66266.8(a)(1), discussed above.

In section 66266.8(b)(2)(B) the word "will" is being deleted from the original proposed regulations as part of the first noticed revisions, leaving the word "meet" unmodified, in response to a comment received about the original proposed regulations (Comment No. A182).

In section 66266.8(b)(2)(D), existing sections 66808(b)(3)(A-L) and the words "following additional", and "lieu of the operation plan requirements of Article 4 of this chapter" are being deleted, but the words "required", and "subsections (b)(2)... of section 66270.14." are being added. These deletions and additions reflect

changes made more than three years ago in existing state regulations that were inadvertently omitted from section 66808, CCR. At the time that section 66808, CCR, was developed, the permit application requirements set forth in sections 66808(b)(3)(A-L) were not yet part of the Department's permit application regulations. When the Department's permit application regulations became final, the subject subsections were not deleted from section 66808, CCR, as unnecessarily repetitive. Thus, the proposed deletion of the text of the subsections and the addition of references to the Department's existing permit application requirements (with conforming changes in the remaining text) bring section 66808(b)(3), CCR, and therefore new section 66266.6(b)(2)(D), into conformance with existing state regulations.
In section 66266.8(c) the word "upon" is being changed to "on" in the original proposed regulations as part of the first noticed revisions, to correct a grammatical error in existing section 66808(c), CCR.

At the end of section 66266.8, the "authority cited" section numbers are being revised to correct errors in existing section 66808, CCR, or to conform with statutory changes (e.g., Health and Safety Code section 25143) that occurred after section 66808 was adopted in 1985.

Section 66266.9: This section is being modified from existing section 66810, CCR, to conform with other existing state regulations and with the format of the proposed regulations. This section essentially implements Health and Safety Code sections 25150(e) and 25170(i) (i.e., promotes recycling), by offering qualified recyclers of hazardous waste the option of designating their facilities "resource recovery", instead of "hazardous waste", facilities and by providing reduced (further than those in proposed section 66266.8) permit application requirements for such recyclers. Wastes handled can only be those which are exempt from federal regulation, are "special wastes", or conform with other limitations. The modifications to section 66810, CCR, in new section 66266.9 are the following:

In section 66266.9(a) the words "handle or" are being deleted from the original proposed regulations as part of the first noticed revisions, leaving only the term "manage". This change is being made to simplify and clarify the regulations, because the term "management" as defined in section 66260.10 includes "handling".

In sections 66266.9(a)(1), (b)(1), and (c), "chapter" is being changed to "division" to conform with the format of the proposed regulations.

In sections 66266.9(a), (a)(2), (a)(3), (b)(2)(C), and (c), references that included Title 22 section numbers and no

article numbers are being shortened by deleting phrases such as "of this chapter", because the section numbers are unique and thus need no further description. These changes should simplify the regulation.

In sections 66266.9(a), (a)(1), (a)(2), (a)(3), (b)(1), (b)(2)(C), and (c), references to existing sections, articles, or their numbers in the CCR are being changed to conform with the format of the proposed regulations.

In section 66266.9(b)(1), the words "An" and "An operation plan" are being deleted, and the words "Part A of the permit" and "Part B of the permit application" are being added to reflect changes that were made more than three years ago in existing state regulations, but were inadvertently omitted from section 66810, CCR. At that time, "permit application" and "operation plan" were changed to "Part A" and "Part B of the permit application", respectively, everywhere else in the regulations.

In section 66266.9(b)(2)(B) the word "will" is being deleted from the original proposed regulations as part of the first noticed revisions, leaving the word "meet" unmodified, in response to a comment received about the original proposed regulations (Comment No. A183).

In section 66266.9(c) the word "upon" is being changed to "on" in the original proposed regulations as part of the first noticed revisions, to correct a grammatical error in existing section 66810(c), CCR.

At the end of section 66266.9, the "authority cited" section numbers are being revised either to correct errors in section 66810, CCR, or to conform with statutory changes (e.g., Health and Safety Code section 25143) that occurred after section 66810 was adopted in 1985.

<u>Section 66266.10</u>: This section is modified from existing section 66812, CCR, to reflect the definition of "existing facility" in proposed section 66260.10, to conform with the format of the proposed regulations, and to correct errors in capitalization. This section, in conjunction with sections 66266.7, 66266.8, and 66266.9, essentially implements Health and Safety Code sections 25150(e) and 25170(i) (i.e., promotes recycling), by setting forth criteria for qualification as "resource recovery", instead of "hazardous waste", facilities and thus for the reduced permit application requirements offered by two of these three sections, if applicable. The modifications to section 66812, in new section 66266.10, CCR, are the following:

In sections 66266.10(a) and (b), references to existing sections of CCR are being changed to conform with the format of the proposed regulations.

Also in sections 66266.10(a) and (b), references that included Title 22 section numbers and no article numbers are being shortened by deleting phrases such as "of this chapter", because the section numbers are unique and thus need no further description. These changes should simplify the regulation.

In sections 66266.10(a)(1), (a)(2) and (a)(3), as part of the second noticed revisions, the initial phrases "An existing facility, which is a ", "A modification to an existing facility, which is a", and "A new facility, which is a" are being deleted, respectively, from the original proposed regulations. They are being deleted, because they all depend on the the concept of an "existing facility", and unfortunately, proposed section 66266.10 defines "existing facility" in subsection (a)(2) for purposes of proposed Chapter 16 differently than proposed section 66260.10 already defines that term for purposes of the entire division. Therefore, to clarify proposed section 66266.10, the subject phrases are being deleted, leaving the "definitions" to stand by themselves as mere descriptions of particular categories of facilities. Conforming changes are also being made as follows:

> In sections 66266.10(a)(1), (a)(2) and (a)(3) an initial capitalized "A" is being added where the above phrases were deleted.
>
> In section 66266.10(a)(2) the words "an existing" are being deleted and the phrase "a [facility] described in subsection (a)(1) of this section" is being added.
>
> In section 66266.10(b) the tabulated criteria for qualification as a resource recovery facility are being modified as shown to designate the facilities respectively discussed in sections 66266.10(a)(1), (a)(2) and (a)(3). Also, in section 66266.10(b) the "notes" accompanying the tabulated criteria for qualification as a resource recovery facility are being modified at Notes b, c, e and g as shown to designate the facilities respectively described in sections 66266.10(a)(1), (a)(2) and (a)(3).

In sections 66266.10(a)(1), (a)(3) and (b) (Note (a)), the initial capital letters of the term "Resource Recovery Facility Permit" are being changed to lower case, because that term is not used as the name of any particular type of facility permit in the various contexts of the subject section. These changes correct typographical errors that were made in section 66812, CCR, but were not detected when that section was adopted in 1985.

At the end of section 66266.10, the "authority cited" and "reference" section numbers are being revised to correct errors in section 66812, CCR, or to conform with statutory changes (e.g., Health and Safety Code section 25143) that occurred after section 66812 was adopted in 1985.

Section 66266.11: This section is identical to existing section 66814, CCR, except that at the end of section 66266.11, the "reference" section numbers are being revised to correct errors in existing section 66814, CCR.

ARTICLE 3: REQUIREMENTS FOR MANAGEMENT OF RECYCLABLE MATERIALS USED IN A MANNER THAT CONSTITUTES DISPOSAL:

This article is based on 40 CFR Part 266, Subpart C, but as part of the second noticed revisions, the entire article is being deleted from the original proposed regulations and from the first noticed revisions. The Department has decided to address requirements for management of recyclable materials used in a manner constituting disposal as part of a separate rulemaking. Therefore, until the Department adopts such regulations, recyclable materials used in a manner constituting disposal are generally subject to full Departmental regulation as if they were ordinary hazardous wastes, pursuant to Health and Safety Code section 25143.2. Since the Department is not rejecting 40 CFR Part 266, Subpart C, but is only postponing its incorporation into the proposed regulations, the Department is not providing more detailed reasons for not adding the subject federal regulations to the proposed regulations at this time. (The article consisted of proposed sections 66266.20, 66266.21, 66266.22, 66266.23, and 66266.24 which were based on existing 40 CFR sections 266.20, 266.21, 266.22 and 266.23.)

ARTICLE 4: HAZARDOUS WASTES AND CERTAIN USED OILS REGULATED AS HAZARDOUS WASTE FUELS:

Article Overview: This article is based on 40 CFR Part 266, Subpart D, which establishes special requirements applicable to hazardous wastes and certain used oils (as well as fuels derived from such wastes and oils) that are burned for energy recovery in specified devices other than incinerators. These federal regulations are less stringent than the federal regulations applicable to hazardous wastes burned in incinerators. For example, federal permits are required for incinerators burning hazardous wastes for disposal, but not for boilers or industrial furnaces burning hazardous wastes for fuel.

Existing state laws and regulations generally do not provide special requirements for most of the subject wastes and oils; those wastes and oils are ordinarily fully regulated as hazardous wastes which are burned in incinerators for energy recovery or any other purpose (e.g., state permits are required). However, state laws and regulations do not specifically address: (1) fuels that are derived from hazardous wastes or from certain used oils; and (2) certain used oils that are burned as fuels. Therefore, the federal regulations in 40 CFR Part 266, Subpart D, are being added as proposed Article 4, but are being modified such that they apply only to those two classes of materials.

State law was significantly modified by AB 817 (Ch. 1254, Stats. 1989) effective January 1, 1990 to address (among other provisions) oils containing 2 ppm to 5 ppm of PCBs and to address certain oils containing more than 1,000 ppm, but not more than 3,000 ppm, of total halogens (part of the federal total halogen standard of 40 CFR sections 266.40(c) and (e)), as specified (Health and Safety Code sections 25250.1(c),(d) and (e). Thus (for example), in order to qualify for special minimal regulation as "recycled oil", used oil must contain less than 2 ppm of PCBs and must conform with the federal total halogen standard, among other provisions. These statutory changes allow the deletion and/or modification of a number of provisions from the original proposed regulations as part of the first noticed revisions.

The specific sections of Article 4 are discussed separately below. Where applicable, the deletions and/or modifications due to AB 817, (Ch. 1254, Stats. 1989) are discussed with respect to the sections in which they are being made.

Section 66266.30: This proposed section corresponds to 40 CFR section 266.30 (in part), which is being deleted, and is titled "Applicability." It consists of five principal subsections, discussed separately below.

Proposed section 66266.30(a) identifies materials that are subject to regulation under proposed Article 4 which contains the federal 40 CFR Part 266, Subpart D requirements for

hazardous waste fuels. These materials include the following which are regulated less stringently under existing state requirements than under existing federal requirements:

Used oil that is generally exempt from state regulation (except for minor record keeping requirements), because it meets state standards in Health and Safety Code sections 25250.1(c), (d), and (e). These state standards are generally at least as stringent as corresponding federal standards (e.g., the state standard for total halogens in conditionally exempted oil is 3,000 ppm or less, whereas the federal standard for such oil is 4,000 ppm or less; see Health and Safety Code section 25250.1(c)(6) and 40 CFR section 266.40(e)). However, state requirements do not clearly address the following additional characteristics that federal requirements address, with respect to oil that meets the state standards cited above:

1. Oil that contains total halogens at concentrations of more than 1,000 ppm, but not more than 3,000 ppm;

2. Oil that is presumptively mixed with other hazardous wastes; and

3. Oil that is burned for energy recovery in boilers or industrial furnaces that are not regulated as incinerators.

Oil that has all three of the characteristics listed above is subject to federal regulation under 40 CFR Part 266, Subpart D, even if it meets the federal standards in 40 CFR section 266.40(e) (see 40 CFR sections 266.40(c) and (e)). Therefore, oil having these characteristics is being addressed in proposed section 66266.30(a)(1).

Fuel that is produced from used oil by processing, blending or other treatment, and that meets state standards in Health and Safety Code sections 25250.1(c), (d), and (e) (which, as discussed above, are generally at least as stringent as corresponding federal standards). However, state requirements do not clearly address such fuel having all three of the additional federal characteristics identified above. Fuel that conforms with these three federal characteristics is subject to federal regulation under 40 CFR Part 266, Subpart D, even if it meets federal standards in 40 CFR section 266.40(e). Therefore, fuel having these characteristics is being addressed in proposed section 66266.30(a)(1).

Fuel that is produced from hazardous waste (other than used oil) by processing, blending or other treatment and that is burned for energy recovery in boilers or industrial furnaces which are not regulated as

incinerators. This fuel is generally exempt from existing state requirements, because it must be produced by facilities operated under the Department's more stringent permit controls (or equivalent), (the Department regulates the recycling process itself, whereas USEPA does not, as discussed elsewhere in this "Statement of Reasons"), and because it is considered to be a product, not a waste. However, this fuel is subject to federal regulation under 40 CFR sections 261.3(c)(2)(i) and 266.30. Therefore, this fuel is being addressed in proposed section 66266.30(a)(2).

A number of changes are being made to the original proposed regulations in section 66266.30(a) as part of the first noticed revisions. These are the following:

In the preamble of section 66266.30(a) the cross-references to "subsections (b) and (e) of" the section are being deleted, leaving the generalized reference to the section itself. This change is being made for clarity, because the specificity of the cross-references is unnecessary.

In section 66266.30(a)(1) the words "and recycled oil" are being deleted, because the standards for "recycled oil" were revised by AB 817 (Ch. 1254, Stats. 1989). Recycled oil that meets the revised standards in Health and Safety Code sections 25250.1(c), (d) and (e) obviously cannot be "recycled oil" unless it meets them, so none of the exceptions addressed in the proposed subsection (all of which are part of the recycled oil standards) can apply. (The verb "are" is being changed to "is" in order to conform with this change.)

Also in section 66266.30(a)(1) the phrase, "that meet the standards...[and] that may contain ...PCBs," is being deleted in part (the part of the subject phrase dealing with PCBs) because AB 817 (Ch. 1254, Stats. 1989) revised the "recycled oil" standards to exclude oils containing PCBs at the specified concentrations. Thus, oils which contain those concentrations of PCBs are subject to Departmental regulation as ordinary used oils, and when such oils are burned for energy recovery, they are subject to full regulation as hazardous wastes (except for the modified manifesting issue discussed with respect to proposed section 66266.50(c) elsewhere in this "Statement of Reasons"). Since such full regulation supersedes the regulations of proposed Article 4, the

deleted phrase is irrelevant. The phrase is also being deleted in part (the part of the subject phrase dealing with the standards) and repositioned in the proposed subsection to improve the context. Thus, the phrase "meets the standards...) Section 25250.1," is being added as shown.
In sections 66266.30(a)(1), (a)(1)(A) and (a)(1)(B), a number of related changes are being made.
Section 66266.30(a)(1)(B) is being deleted, because oils unintentionally mixed with other hazardous wastes cannot meet the revised recycled oil standards, be mixed with other hazardous wastes (as specified in Health and Safety Code Section 25250.1(e)), and still escape Departmental regulation under AB 817 (Ch. 1254, Stats. 1989). Since only those oils that escape Departmental regulation, but do not escape corresponding federal regulation, are the subjects of proposed Article 4, proposed section 66266.30(a)(1)(B) is no longer needed. Due to the deletion of section 66266.30(a)(1)(B), the word "either" in section 66266.30(a)(1) is irrelevant and is also being deleted. Also due to the deletion of section 66266.30(a)(1)(B), the punctuation, designations, and/or words "(A) Contain" and "; or" are being deleted.
Lastly, the phrase "except that the oil contains" is being added, the verb "are" is being changed to "is", and a period is being added, all as conforming changes.

Proposed section 66266.30(b) identifies materials that are not subject to regulation under proposed Article 4, which contains the federal 40 CFR Part 266, Subpart D requirements for hazardous waste fuels. The materials include the following, which are either: regulated more stringently under existing state law; regulated under other requirements; or exempt from regulation entirely.

Health and Safety Code section 25250.1(a)(5) essentially excludes from the definition of "used oil", and thus from special regulation under state used oil statutes, used oils that:

Are intentionally mixed with other hazardous wastes;

Contain 5 ppm or more of PCBs; or

Have a flashpoint below 100° F.

Such used oils are, therefore, subject to full state regulation as any other hazardous wastes. If, for example, the used oils are intentionally mixed with other hazardous wastes, then even if they meet state standards for exemption from (most) state regulation under Health and Safety Code sections 25250.1(c), (d), and (e), they are not eligible for special regulation under proposed

Article 4 and must be managed as any other hazardous wastes. Thus, state requirements are more stringent than corresponding federal requirements in 40 CFR Part 266, Subpart D, on which proposed Article 4 is based.

Used oils that qualify for regulation under proposed Article 6 (see proposed section 66266.50) are, of course, not regulated under proposed Article 4. These are discussed under Article 6 elsewhere in this "Statement of Reasons".

Used oils and other hazardous wastes that are exempt from state regulation entirely, are, of course, not regulated under any of the proposed regulations, including under proposed Article 4. Fuels produced from such used oils or other hazardous wastes are exempt for the same reason.

Several changes are being made to the original proposed regulations in section 66266.30(b)(2) as part of the first noticed revisions, in response to a comment received about the original proposed regulations (Comment No. 185). The "end parenthesis" is being moved from after the word "treatment" to after the word "or" to correct a grammatical error, and the comma is being moved to substitute for the "end parenthesis". Similarly (although not part of the comment), the words "if" and "hazardous waste" are being added to clarify the context. (The plural of "section" is being changed to the singular to correct another grammatical error.)

Proposed section 66266.30(c) is modified from existing 40 CFR section 266.40(c), which (among other provisions) establishes a rebuttable presumption that used oil containing more than 1,000 ppm of total halogens is mixed with other hazardous wastes. Existing state requirements contain no comparable provision and indeed exempt from (most) state requirements, used oil that meets the state standards in Health and Safety Code sections 25250.1(c), (d), and (e). The state standard for total halogens in used oil set forth in Health and Safety Code section 25250.1(c) is 3,000 ppm or less, which is more stringent than the corresponding federal standard of 4,000 ppm or less of total halogens set forth in 40 CFR section 266.40(e), except for the federal rebuttable presumption provision. Therefore, proposed section 66266.30(c) is being added to address the universe of used oil that meets state standards, but also contains total halogens at concentrations greater than 1,000 ppm, but not more than the state standard of 3,000 ppm. (If the used oil exceeds the state standard and is burned, either for energy recovery or for any other purpose not addressed differently in the proposed regulations, then the oil is fully regulated by the Department as any other hazardous waste destined for incineration, except that the modified manifesting procedure set forth in Health and Safety Code section 25250.8 would ordinarily apply. (See the

discussion of proposed section 66266.50(c) for an exclusion from modified manifesting.))

A number of changes are being made to the original proposed regulations in section 66266.30(c) as part of the first noticed revisions, to reflect the revised "recycled oil" standards set forth in AB 817 (Ch. 1254, Stats. 1989). "Recycled oil" cannot contain between 1,000 ppm and 3,000 ppm of total halogens and be presumed to have been mixed with other hazardous wastes, as specified, due to the new statutory requirement for compliance with the federal "presumptive mixing rule" of 40CFR section 266.40(c). Therefore, the words "and recycled oil" and "or recycled oil" are being deleted. Conforming changes like "are' to "is", "fuels" to "fuel" and "they have" to it has "are also being made. (The plural of "wastes" is being changed to the singular to correct a grammatical error.)

Proposed section 66266.30(d) is being added for clarification to remind the reader about the existence of the state statutory prohibition on the intentional contamination of used oil with other hazardous wastes (see Health and Safety Code section 25250.7).

Several changes are being made to the text of the original proposed regulations in section 66266.30(d) as part of the first noticed revisions, to conform with the changes made by AB 817 (Ch. 1254, Stats. 1989) to Health and Safety Code section 25250.7, which is its cited basis. These changes include the deletion of the punctuation and phrases ", or knowingly accept," and "which has been contaminated", and the addition of the phrase "who generates, stores or transfers used oil".

Proposed section 66266.30(e) addressing used oil and recycled oil containing 2 ppm to 5 ppm of PCBs (as specified) is being deleted from the original proposed regulations as part of the first noticed revisions, and is being replaced with a new subsection (e) as part of the second noticed revisions. The deletion is being made, because AB 817 (Ch. 1254, Stats. 1989) now requires oils having the specified characteristics to be regulated as ordinary used oils, since they do not meet the revised "recycled oil" standards of Health and Safety Code section 25250.1(c), (d) and (e). Such oils cannot be burned for energy recovery, unless authorized under other provisions of law, as set forth in Health and Safety Code section 25250.5. As such, those oils are subject to Department regulation as ordinary hazardous wastes destined for incineration, except for the modified manifesting procedure set forth in Health and Safety Code section 25250.8 (see the discussion of proposed section 66266.50(c) for an exclusion from modified manifesting). Since those hazardous waste control requirements are more stringent than the requirements

set forth in the subsection (e) of the original proposed regulations, that subsection has been superseded by AB 817 (Ch. 1254, Stats. 1989).

The replacement subsection (e) is being added (partially in response to a comment (Comment Nos. 15D, E and F) received about the first noticed revisions) to remind the reader of the new AB 817 (Ch. 1254, Stats. 1989) prohibition on blending or diluting used oil with crude or virgin oil in order to meet the recycled oil standards (Health and Safety code section 25250.1(c)(7)) in Health and Safety Code sections 25250.1 (c), (d) and (e). Since the term "blending" is used in the text of proposed Article 4, and can (for example) apply to blending used oil with other than crude or virgin oil, the prohibition on blending cited in proposed section 66266.30(e) does not prohibit blending altogether but does limit the scope of the blending that is allowed. Thus, proposed section 66266.30(e) is needed to warn the reader of the statutory limitation on the scope of the blending that is allowed in the context of proposed Article 4.

All the changes in proposed section 66266.30 are being made for clarification of the relationship between the existing state provisions and the federal regulations from which section 66266.30 was derived, namely 40 CFR sections 266.30 and 266.40(c). As such, the changes have no impact on the regulated community, state or local agencies that is not already in existence due to Health and Safety Code section 25159 et seq., which require that the Department maintain an equivalent or more stringent state program compared with the corresponding federal program.

Section 66266.31: This proposed section is virtually identical to 40 CFR section 266.31, except for minor modifications to conform with the format of the proposed regulations. The section sets forth limitations on the applicability of the remaining provisions of proposed Article 4, discussed above. The limitations include limitations on persons to whom hazardous waste fuel may be marketed and limitations on the devices in which hazardous waste fuel may be burned. The minor modifications to 40 CFR section 266.31 in new section 66266.31 are the following:

In proposed sections 66266.31(a)(1) and (a)(2), as specified, "EPA" is being changed to "the Department", "U.S. EPA Identification Number" to "USEPA Identification Number", and "paragraph" to "subsection", to conform with the format of the proposed regulations.

In proposed section 66266.31(b), the subdivisions of subsection (b)(2) are being renumbered, and the section references in subsections (b)(1) and (b)(2) are being renumbered to conform with the format of the proposed regulations.

In proposed sections 66266.31(b)(1) and (b)(2), the phrase "of this chapter" is being deleted from the cross-references which include Title 22 section numbers. Because the section numbers are unique, no additional description is necessary.

Section 66266.32. This proposed section is similar to 40 CFR section 266.32, except for some minor modifications for clarification and for conformance with the format of the proposed regulations. The section essentially: regulates generators of hazardous waste fuels as generators of any other hazardous wastes; and guides the reader to other requirements that apply to such generators, if those generators manage the subject fuels in specified ways. The minor modifications to 40 CFR section 266.32 in new section 66266.32 include the following:

In section 66266.32(a), the phrases "that is used as a" and "or used to produce a fuel" are being deleted for clarification, because "hazardous waste fuel" as described in proposed section 66266.30(a) (for purposes of proposed Article 4) conveys the same information as the deleted phrases. Also, "Part 262" is being changed to "Chapter 12" and "chapter" is being changed to "division", to conform with the format of the proposed regulations.

In 40 CFR section 266.32(b), the term "burner" is used before it is described (the description finally appears in 40 CFR section 266.35), so a cross-reference to the description is being added to proposed section 66266.32(b), parenthetically, for clarification. Also, the section reference is being changed to conform with the format of the proposed regulations.

In section 66266.32(c) the word "burn" is being deleted from the original proposed regulations as part of the first noticed revisions and is being replaced with the words "are burners" in response to a comment received about the original proposed regulations (Comment No. A186). This change corrects what apparently was an error.

In section 66266.32(c), the section reference is being changed to conform with the format of the proposed regulations.

Section 66266.33. This proposed section is similar to 40 CFR section 266.33, except for minor modifications for clarification and for conformance with the format of the proposed regulations. The section essentially regulates transporters of hazardous waste fuels as transporters of any other hazardous wastes. The minor modifications include the deletion for clarification of the parenthetical phrase "(and hazardous waste that is used to produce a fuel)", because "hazardous waste fuel" as described in proposed section 66266.30(a) (for purposes of proposed Article 4) conveys the same information as the deleted phrase, and is therefore redundant. Also, "Part 263" is being changed to "Chapter 13", and

"chapter" is being changed to "division", to conform with the format of the proposed regulations.

Section 66266.34. This proposed section is similar to 40 CFR section 266.34, except for minor modifications for clarification and for conformance with the format of the proposed regulations. The section essentially regulates persons who market hazardous waste fuels as persons who generate and/or store any other hazardous wastes, and adds some notification and record-keeping requirements, as specified. The minor modifications to 40 CFR section 266.34 in new section 66266.34 are the following:

In the preamble to proposed section 66266.34, the phrase ", persons who receive hazardous waste from generators and produce, process, or blend hazardous waste fuel from these hazardous wastes," is being deleted, because such persons are regulated more stringently under existing state laws and regulations than they are under existing federal regulations (i.e., 40 CFR section 266.34), as discussed above under proposed section 66266.30. Also, the parenthetical phrase "(as defined in section 66266.35)" is being added for clarification to direct the reader to the description of the term "burner". That term is used often enough in proposed section 66266.34 to warrant the cross-reference only at the outset of the section.

In section 66266.34(a), the section reference is being changed to conform with the format of the proposed regulations.

In section 66266.34(b), "EPA" is being changed to "the Department" and "must" is being changed to "shall" to conform with the format of the proposed regulations. Also, references to "he", "him" and/or "his" are being deleted and the terms "marketer", etc., as applicable, are being added to clarify the text and to eliminate references to gender, in conformance with the format of the proposed regulations. Lastly, "U.S. EPA Identification Number" is being changed to "USEPA Identification Number" to conform with the format of the proposed regulations.

In section 66266.34(c), the section cross-reference is being revised. Also, the words "Subparts A" through "L" of "Part 264" are being changed to "Articles 1" through "12" of "Chapter 14", "Subparts A" through "L" of "Part 265" to "Articles 1" through "12" of "Chapter 15", "Part 270" to "Chapter 20", and "chapter" to "division" to conform with the format of the proposed regulations. Also in section 66266.34(c) the cross-reference to section "66266.34" is being changed as part of the first noticed revisions to correct an error in the original proposed regulations. The cross-reference should have been to section "66262.34" which addresses onsite storage requirements for generators and which is the intended reference.

In section 66266.34(d), "Part 262" is being changed to "Chapter 12", and "chapter" to "division" to conform with the format of the proposed regulations.

In section 66266.34(e)(1), the phrase "he must" is being changed to "the marketer shall" to clarify the text and to eliminate references to gender, in conformance with the format of the proposed regulations. In subsections (e)(1)(A) and (e)(2), "EPA" is being changed to "the Department" to conform with the format of the proposed regulations. In subsection (e)(1)(A), "his" is being changed to "the burner's or the marketer's" for clarification and to eliminate references to gender in conformance with the format of the proposed regulations. Related changes ("he must" to "the marketer shall", "he" to "the marketer", and "his" to "the marketer's") are being made in subsection (e)(2) for the same reasons. Lastly, in subsection (e)(1)(B), the section cross reference is being revised, and in subsection (e)(2) the reference to notification under "section 3010 of RCRA" is being changed to reference the Health and Safety Code section which contains state notification requirements comparable to those under RCRA. These last two changes are being made to conform with the format of the proposed regulations.

In section 66266.34(f), "he" is being changed to "the marketer" to clarify the text and to eliminate references to gender, in conformance with the format of the proposed regulations. Also, the words "Parts 262, 264" and "265" are being changed to "Chapters 12, 14" and "15", "chapter" to "division", and "must" to "shall" to conform with the format of the proposed regulations. (The lengthy OMB approval notice was deleted as irrelevant to state regulations.)

Section 66266.35. This proposed section is similar to 40 CFR section 266.35, except for minor modifications to conform with the format of the proposed regulations. The section imposes on owners and operators of boilers and industrial furnaces that burn hazardous waste fuels, essentially the same requirements imposed on owners or operators of hazardous waste storage facilities. The device in which the fuel is burned is essentially unregulated, except for being required to qualify as a "boiler" or "industrial furnace" under the definitions of those terms in proposed section 66260.10. Additional notification and record keeping requirements also apply. The minor modifications to 40 CFR section 266.35 in new section 66266.35 are the following:

In the preamble to proposed section 66266.35, the section cross reference is being changed to conform with the format of the proposed regulations. Also, the word "termed" is being added to emphasize that the description of a "burner" is indeed a definition of that term for the limited purposes of proposed Article 4. This change corresponds to wording used

in other sections of the article to describe certain persons subject to regulation (e.g., "marketer" in proposed section 66266.34).

In section 66266.35(a), the section cross-reference is being changed to conform with the format of the proposed regulations.

In section 66266.35(b), "EPA" is being changed to "the Department", and "must" is being changed to "shall", to conform with the format of the proposed regulations. Also, the "U.S. EPA Identification Number" is being changed to "USEPA Identification Number" to conform with the format of the proposed regulations. Lastly, references to "he" and "his" are being changed to "the burner" or "the burner's" to clarify the text and to eliminate references to gender, in conformance with the format of the proposed regulations.

In section 66266.35(c)(1), the section cross-reference is being changed to conform with the format of the proposed regulations. Also, the phrase "of this chapter" is being deleted from the section cross-reference for clarity, because the Title 22 section number is unique and thus needs no further description. Also in section 66266.35(c)(1) the cross-reference to section "66266.34" is being changed as part of the first noticed revisions to correct an error in the original proposed regulations. The cross-reference should have been to section "66262.34" which addresses onsite storage requirements for generators and which is the intended reference. The error was revealed by a commentor (Comment No. A187), but the commentor did not notice (or identify?) the same kind of error in proposed section 66266.34(c).

In section 66266.35(c)(2), the words "Subparts A" through "L" of "Part 265" are being changed to "Articles 1" through "12" of "Chapter 15", "Parts 270" and "124" to "Chapters 20" and "21", and "chapter" to "division" to conform with the format of the proposed regulations.

In section 66266.35(c)(3), the words "Subparts A" through "L" of "Part 264" are being changed to "Articles 1" through "12" of "Chapter 14", "Parts 270" and "124" to "Chapters 20" and "21", and "chapter" to "division" to conform with the format of the proposed regulations.

In the preamble of section 66266.35(d), "he" is being changed to "the burner" to clarify the text and to eliminate references to gender, in conformance with the format of the proposed regulations. Also, "must" is being changed to "shall" to conform with the format of the proposed regulations.

In section 66266.35(d)(1), "EPA" is being changed to "the Department" to conform with the format of the proposed regulations. Also, "he" and "his" are being changed to "the burner" and "the burner's" to clarify the text and to eliminate references to gender, in conformance with the format of the proposed regulations.

In section 66266.35(d)(2), the section cross-reference is being changed to conform with the format of the proposed regulations. Also, "he" is being changed to "the burner" to clarify the text and to eliminate references to gender, in conformance with the format of the proposed regulations.

In section 66266.35(e), the words "Parts 264" and "265" are being changed to "Chapters 14" and "15", "chapter" to "division", and "must" to "shall" to conform with the format of the proposed regulations. Also, "he" is being changed to "the burner" to clarify the text and to eliminate references to gender, in conformance with the format of the proposed regulations.

The note addressing OMB approval was deleted as irrelevant to the proposed regulations.

ARTICLE 6: REQUIREMENTS FOR MANAGEMENT OF USED OIL

Article Overview: This article is based primarily on applicable provisions of 40 CFR Part 266, Subparts C, D and E, which respectively address (in whole or in part): hazardous wastes used in a manner constituting disposal; hazardous wastes (including some used oils) burned for energy recovery; and other used oils burned for energy recovery. The federal provisions are generally less stringent than the state counterparts. Thus, the only federal provisions included in proposed Article 6 are either those that are not clearly covered by detailed state used-oil statutes (Health and Safety Code section 25250 et seq.) or those that are more stringent.

For example, included in proposed Article 6 are more stringent federal provisions addressing the manifesting of certain used oils burned for energy recovery, as specified. Also included are more stringent federal provisions addressing record keeping for management of certain used oils burned for energy recovery. These federal provisions are being added pursuant to Health and Safety Code section 25159 et seq. With the added provisions of proposed Article 6, state requirements for used oil are at least equivalent to corresponding federal requirements.

As discussed elsewhere in this "Statement of Reasons" with regard to proposed Article 4, state law was significantly modified by AB 817 (Ch. 1254, Stats. 1989) effective January 1, 1990 to address (among other provisions) oils containing 2 ppm to 5 ppm of PCBs and to address certain oils containing more than 1,000 ppm, but not more than 3,000 ppm, of total halogens, as specified (Health and Safety Code sections 25250.1(c), (d) and (e)). Thus (for example), in order to qualify for special minimal regulation as "recycled oil", used oil must contain less than 2 ppm of PCBs and must conform with the federal total halogen standard of 40 CFR sections 266.40(c) and (e), among other provisions. These statutory changes allow the deletion and/or modification of a number of provisions from the original proposed regulations as part of the first noticed revisions. Where applicable, these deletions and/or modifications are discussed below with respect to the sections in which they are being made.

Section 66266.50: This proposed section, titled "Requirements for Used Oil, and Fuel Derived from Used Oil, that are Burned for Energy Recovery", consists of five principal subsections, discussed separately below.

> Proposed section 66266.50(a) essentially states that (with specified exceptions) the requirements set forth in proposed Article 6 apply to "used oil" and "recycled oil", as defined in Health and Safety Code section 25250.1, in addition to the requirements set forth in the state's used-oil statutes (i.e., Article 13, Chapter 6.5, Division 20, Health and Safety Code). This statement is needed for clarity to warn the reader that

proposed Article 6 does not contain all state requirements applicable to the management of "used oil" and "recycled oil".

Proposed section 66266.50(b) identifies materials that are either regulated under other state requirements (existing or proposed) or exempted from regulation in some manner. These are the following:

> Used oil (including fuel produced from used oil by processing, blending or other treatment) that: is exempt from (most) state regulation (because it meets state standards, as specified); is burned for energy recovery in specified devices; contains more than 1,000 ppm, but not more than 3,000 ppm, of total halogens; and is presumed to have been mixed with other hazardous waste, as specified (section 66266.50(b)(1)). Such oil is regulated under proposed Article 4 instead of proposed Article 6.
>
> Used oil (including fuel produced from used oil by processing, blending or other treatment) that is either of the following:
>
>> Exempted from regulation, as specified in sections 66261.4 and 66261.6(a)(3), and Health and Safety Code section 25250.3 (sections 66266.50(b)(2) and 66266.30(b)(1)(C)); or
>>
>> Subject to regulation as any other hazardous waste instead of as used oil, because it either
>>
>>> Has a flashpoint below 100° F;
>>>
>>> Contains 5 ppm or more of PCBs; or
>>>
>>> Has been intentionally mixed with other hazardous wastes, as specified in Health and Safety Code section 25250.1(a)(5) (sections 66266.50(b)(2) and 66266.30(b)(1)(A)).

The oils listed above as being regulated under proposed Article 4 are those that are presently exempt from (most) state regulation but that are federally regulated as hazardous waste fuels under 40 CFR Part 266, Subpart D (incorporated as Article 4 in the proposed regulations). Existing state law has no provisions comparable to the federal regulations addressing presumptively mixed oils, but does require compliance with those federal regulations (see Health and Safety Code sections 25250.1(a)(5) and (c)(6)).

The oils listed above as exempted from regulation, or as fully regulated as any other hazardous wastes, are the same as those exempted, or as those less stringently regulated, under

corresponding federal regulation. For example, used oil that has been intentionally mixed with other hazardous wastes is excluded from the definition of "used oil" in state law, pursuant to Health and Safety Code section 25250.1(a)(5) and is thus subject to full regulation as any other hazardous waste (note also the prohibition on such mixing in Health and Safety Code section 25250.7). Such intentionally-mixed used oil is generally subject to the federal 40 CFR Part 266, Subpart D, requirements imposed on hazardous waste fuels, instead of to the less stringent federal 40 CFR Part 266, Subpart E, requirements imposed on used oil fuels. (For example, the former requires manifesting and storage facility permits, whereas the latter does not.) However, the 40 CFR Part 266, Subpart D standards are less stringent than the state's full hazardous waste control requirements which impose permit requirements on the recycling process itself, whereas the federal requirements do not.

This proposed section is needed for clarity to direct the reader to the applicable requirements or exemptions.

A number of changes are being made to the original proposed regulations in section 66266.50(b) as part of the first noticed revisions. These are the following:

> In section 66266.50(b)(1) the words "and recycled oil" are being deleted, because of revisions to the recycled oil standards under AB 817 (Ch. 1254, Stats. 1989). (See discussion of proposed section 66266.30(a)(1), elsewhere in this "Statement of Reasons".) Therefore, the words "and recycled oil" are being deleted from the subject section.
>
> Also in section 66266.50(b)(1) the phrase "that meet the standards... and" is being modified and reinserted farther along in the same subsection to conform with other changes discussed below and to improve the context (see the added phrase "and that meets the standards of ...25250.1,")
>
> Again in section 66266.50(b)(1) various conforming changes are being made. The verb "are" is being changed to "is" to conform with the deletion of "recycled oil"; the relative pronoun "that" is being changed to "which" to avoid possible confusion with the relative pronoun "that" immediately preceding; and the phrase "are subject to the following requirements:" is being deleted to reflect the deletion of three of the four subsections (i.e., (b)(1)(B) through (b)(1)(D)) which follow.
>
> In section 66266.50(b)(1)(A) the designation and word "(A) If" are being deleted to reflect the deletion of subsections (b)(1)(B) through (b)(1)(D) which follow it. Also, the punctuation and phrase ", but not more than 3,000 ppm," of total halogens is being added, because it had been omitted inadvertently. The punctuation and phrase ", contains less

than 2 ppm of PCBs, " is being deleted, because AB 817 (Ch. 1254, Stats. 1989) revised the "recycled oil" standards of Health and Safety Code sections 25250.1(c), (d) and (e) to exclude oils containing 2 ppm or more of PCBs; so, the deleted phrase is no longer needed. Lastly, the comma and words ", then the" are being deleted and the period and word ". Such" are being added to conform with the deletion of the designation and word "(A) If" and to simplify the context (by splitting the already lengthy sentence into two sentences), respectively.

Section 66266.50(b)(1)(B) is being deleted entirely, due indirectly to a comment received about subsection (b)(1)(C) of that section (mentioned below) and to the AB 817 (Ch. 1254, Stats. 1989) exclusion from the recycled oil standards of Health and Safety Code section 25250.1(c),(d) and (e), oils containing 2 ppm or more of PCBs. Instead, an entirely new subsection (d) is being added for clarity to address this issue in its new context of AB 817 (Ch. 1254, Stats. 1989).

Section 66266.50(b)(1)(C) is being deleted entirely, due indirectly to a comment received and to the AB 817 (Ch. 1254, Stats. 1989) exclusion described in the immediately preceding item. The commentor discovered a technical error, but did not discover that the same error existed in proposed section 66266.50(b)(1)(B), namely that requirements for operating logs and certain other record keeping requirements were missing from both subsections. Instead of the deleted subsection, an entirely new subsection (d) is being added for clarity to address this issue in its new context of AB 817 (Ch. 1254, Stats. 1989).

Section 66266.50(b)(1)(D) is being deleted entirely, because oils unintentionally mixed with other hazardous wastes cannot meet the revised recycled oil standards of Health and Safety Code section 25250.1(c), (d) and (e), be mixed with other hazardous wastes as specified in Health and Safety Code section 25250.1(e)), and still escape Departmental regulation under AB 817 (Ch. 1254, Stats. 1989). Since only those oils that escape Departmental regulation, but do not escape corresponding federal regulation, are the subjects of proposed Article 6, proposed section 66266.50(b)(1)(D) is no longer needed.

Section 66266.50(b)(2) is being modified to conform with the modifications to improve the context of subsection (b)(1) described above. Thus, the comma after the cross-reference to subsection (b)(1)(C) is being deleted and a period and the words "Such oils" are being added.

New section 66266.50(b)(3) is being added (partially in response to a comment received (Comment Nos. 15D, E and F) about the first noticed revisions) to remind the reader of the

new AB 817 (Ch. 1254, Stats. 1989) prohibition on blending or diluting used oil with crude or virgin oil in order to meet the recycled oil standards of Health and Safety Code sections 25250.1(c), (d) and (e). Since the term "blending" is used in the text of Article 6, and can (for example) apply to blending used oil with other than crude or virgin oil, the prohibition on blending cited in proposed section 66266.50(b)(3) does not prohibit blending altogether but does limit the scope of the blending that is allowed. Thus, proposed section 66266.50(b)(3) is needed to warn the reader of the statutory limitation on the scope of the blending that is allowed in the context of proposed Article 6.

Section 66266.50(b) is being modified as part of the second noticed revisions (indirectly in response to a comment received (Comment Nos. 15D, E and F)) to conform with the addition of proposed section 66266.50(b)(3) to the first noticed revisions of the regulations. The modifications include the deletion of the words "materials" and "such materials" and the addition of the words "they" and "or prohibited".

Proposed section 66266.50(c) essentially states that the modified manifesting procedure allowed under Health and Safety Code section 25250.8 does not apply to used oils (including fuels produced from such oils, as specified) that do not meet the standards in Health and Safety Code section 25250.1(c),(d), and (e) and that are subject to federal hazardous waste fuel regulations in 40 CFR Part 266, Subpart D, which requires full manifesting of the subject oils. The two categories of oils included in that federally regulated universe are:

Oils that:

Are burned for energy recovery in any boiler or industrial furnace, as specified; and

Contain more than 1,000 ppm of total halogens; and

Are presumed to have been mixed with other hazardous wastes, as specified (section 66266.50(c)(1)).

Oils that:

Are burned for energy recovery in any boiler or industrial furnace, as specified; and

Contain 1,000 ppm or less of total halogens, or otherwise conform with the federal total halogen standard cited; and

Have been unintentionally mixed with other hazardous wastes that are listed in 40 CFR Part 261 (section 66266.50(c)(2)).

Existing state law has no manifesting provisions comparable to the federal manifesting provisions addressing presumptively-mixed oils and oils unintentionally mixed with certain hazardous wastes. Only intentionally mixed oils (although intentional mixing is prohibited under Health and Safety Code section 25250.7) are required to be transported under full manifest according to existing state law, because such oils are subject to regulation as ordinary hazardous wastes (Health and Safety Code section 25250.1(a)(5)). Therefore, pursuant to Health and Safety Code section 25159 et seq., which requires state regulations to conform with corresponding federal requirements, section 66266.50(c) is being added to the proposed regulations.

A number of changes are being made to the original proposed regulations in section 66266.50(c) as part of the first noticed revisions. These are the following:

In the preamble of section 66266.50(c) the text is being modified in response to a comment received about the original proposed regulations (Comment No. A 189), in order to state which manifesting requirements do, as well as do not, apply to the categories of oils listed. Thus, full manifesting requirements, not modified manifesting requirements, apply to the listed oils. The words "modified", "in", and "does not apply" are being deleted and the punctuation and words "prescribed by", section"s 25160 and 25161... Section", and ", applies" are being added to accomplish this purpose.

In section 66266.50(c)(1)(A) a semicolon is being deleted and a comma and the phrase , "because it contains more than 1000 ppm of total halogens, and it is presumed to have been mixed with other hazardous wastes...and" is being added to simplify and thus clarify the regulation. These changes do not alter the meaning of proposed section 66266.50(c)(1) but allow the deletion of two subsections, (c)(1)(C) and (c)(1)(D), thereby simplifying the regulation.

In section 66266.50(c)(1)(B) the word "or" is being added after the concluding semicolon to conform with the deletions of subsections (c)(1)(C) and (c)(1)(D). The word "or" had previously been part of deleted subsection (c)(1)(D).

As mentioned above, sections 66266.50(c)(1)(C) and (c)(1)(D) are being deleted and instead are being combined with section 66266.50(c)(1)(A) to simplify, and thus clarify, the regulation.

In section 66266.50(c)(2) a new subsection (c)(2)(A) is being added, because of AB 817 (Ch. 1254, Stats. 1989) revisions to

the "recycled oil" standards of Health and Safety Code sections 25250.1(c),(d) and (e). The revisions include a requirement for compliance with the federal total halogen standard of 40 CFR section 266.40 (c) in order for oil to qualify for special regulation as "recycled oil". Thus, in the context of section 66266.50(c)(2), the federal total halogen standard must be addressed to avoid overlap with section 66266.50(c)(1). Also, to simplify the regulation over all, section 66266.50(c)(2)(B) is being deleted and combined with new section 66266.50(c)(2)(A) and with additional information about the "other hazardous wastes" (i.e, the reference to 40 CFR Part 261) gleaned from AB 817 (Ch. 1254, Stats. 1989), namely Health and Safety Code section 25250.1(c)(6).

In section 66266.50(b)(2)(A) the subsection designation "(2)(A)" is being changed to "(B)" to conform with the addition of new subsection (c)(2)(A) and the deletion of subsection (c)(2)(B). Other conforming changes include: the deletion of the cross-reference to subsection (c)(1)(A) (i.e., the words "[subsection]s (c)(1)(A) and "); the deletion of the semicolon and the word "and"; and the addition of a period.

New section 66266.50(d) is being added to the original proposed regulations as part of the first noticed revisions for the reasons mentioned above in the discussion of the deletion of proposed sections 66266.50(b)(1)(B) and (b)(1)(C), namely the addition of the record keeping requirements identified by a commentor (Comment No. A190) to correct a technical error and to avoid the possibility of having to duplicate the somewhat lengthy requirements in the texts of each of the now deleted subsections. The commentor correctly pointed out that the record keeping requirements of 40 CFR section 266.43(b)(6)(i)(A) through (D) are necessary for RCRA equivalence, since the cited state statutes (i.e., Health and Safety Code sections 25250.1 (e) and 25250.19) do not mention these requirements and thus are less stringent than corresponding federal regulations regarding this issue. Since these existing federal record keeping requirements are already part of existing state law pursuant to Health and Safety Code section 25159 et seq., proposed section 66266.50(d) is not adding any new requirements.

New section 66266.50 clarifies the organization of proposed Article 6 for the reader. The new section should have no fiscal impact on the Department or on the regulated community, including small businesses, and would create no local mandate, since the section is being added primarily for informational purposes.

<u>Section 66266.51:</u> Section 66266.51 is being deleted from the original proposed regulations as part of the first noticed revisions. This proposed section, titled "Standards Applicable to

Used Oil Containing PCBs and Burned for Energy Recovery", was modified from federal Toxic Substances Control Act (TSCA) PCB regulations set forth in 40 CFR section 761.20(e): to address a more limited universe of used oil; to include the texts of the cross-references to federal RCRA used oil fuel regulations set forth in 40 CFR Part 266, Subpart E (which is not being separately adopted as part of the proposed regulations, as discussed elsewhere in this "Statement of Reasons"); and to conform with the format of the proposed regulations.

Although PCBs are regulated as any other hazardous wastes under existing state law, PCBs are regulated under TSCA instead of under RCRA which appears to cover most other state and federally-regulated hazardous wastes. TSCA PCB regulations variously cite and/or incorporate RCRA regulations dealing with used oil (the RCRA regulations appear in 40 CFR Part 266 Subpart E; the TSCA regulations appear in 40 CFR Part 761), but the reverse does not occur, although the regulations under both laws are intertwined. For example, TSCA regulations establish requirements that affect used oil as it relates to PCBs and use RCRA regulations to achieve some of their goals. RCRA regulations establish a concentration limit on total halogens (as discussed below for proposed section 66266.52), but do not distinguish whether the halogens originate from PCBs. (Unlike state laws (i.e., Health and Safety Code section 25250.1(c)), federal RCRA regulations establish no specific limits on PCBs.) Therefore, although TSCA and RCRA are separate laws, the respective TSCA and RCRA regulations are intertwined.

USEPA confirmed the existence of the intertwined relationship between the TSCA and RCRA regulations by stating in the preamble to the RCRA used oil regulations (50 FR 49182, November 29, 1985) that used oil fuel containing PCBs is subject to the more stringent of the applicable TSCA and RCRA regulations. Since the TSCA PCB regulations address PCB concentrations as low as 2 ppm in used oil burned for energy recovery, whereas RCRA regulations only address total halogen concentrations in excess of 1000 ppm in such oil, the TSCA regulations are more stringent.

The intertwined TSCA PCB regulations and RCRA used oil regulations parallel to some extent the state's used oil law (Health and Safety Code section 25250 et seq.), which includes special requirements for used oil containing PCBs. Before AB 817 (Ch. 1254, Stats. 1989) became effective on January 1, 1990, state law (Health and Safety Code section 25250.1(c)) essentially did not regulate used oil having a concentration of less than 5 ppm of PCBs, if the oil met the state's other applicable specifications (Health and Safety Code section 25250.1(c) through (e)) for qualification as "recycled oil", even if it was to be burned for energy recovery. (Used oil containing 5 ppm or more of PCBs was and is still not considered to be "used oil" for purposes of Department regulation under state used oil control law, and thus is Department-regulated as any other hazardous waste, regardless of use. (See Health and Safety Code

section 25250.1(a).)) However, federal TSCA regulations (40 CFR Part 761) did and do regulate used oil having as little as 2 ppm of PCBs. Although state used oil control law was generally at least as stringent as corresponding federal RCRA regulations regarding used oil, state used oil control law was less stringent than federal TSCA regulations regarding the 2 ppm limit on PCBs in used oil burned for energy recovery. Therefore, section 66266.51 was added as part of the original proposed regulations.

When AB 817 (Ch. 1254, Stats. 1989) became effective on January 1, 1990, it lowered the concentration limit on PCBs allowed in "recycled oil" to less than 2 ppm. Thus, that new statute eliminated the need for proposed section 66266.51, since used oil containing 2 ppm or more of PCBs was now generally subject to regulation as ordinary hazardous waste when burned for energy recovery.

Section 66266.52: Section 66266.52 is being deleted from the original proposed regulations as part of the first noticed revisions. This proposed section, titled "Concentration Limits on Polychlorinated Biphenyls (PCBs)", addressed PCBs in two categories of used oil and/or related items: (1) road oils, dust suppressants and weed control agents; and (2) asphalt roofing products. The section essentially addressed PCBs at concentrations less than 5 ppm. (Since such oils were essentially exempt from Department regulation, section 66266.52 had to impose the federal TSCA limit of less than 2 ppm of PCBs in oils used as specified.) When AB 817 (Ch. 1254, Stats. 1989) lowered the concentration limit on PCBs in "recycled oil" to less than 2 ppm, section 66266.52 was no longer needed for the same reasons discussed above with respect to section 66266.51. Thus, oils containing 2 ppm or more of PCBs are no longer essentially exempt from regulation and are subject to the prohibitions in Health and Safety Code section 25250.5 regarding land application (as specified) and are subject to regulation essentially as hazardous wastes.

ARTICLE 7: REQUIREMENTS FOR MANAGEMENT OF SPENT LEAD-ACID STORAGE BATTERIES:

Article Overview: This article is essentially the same as existing section 66822, CCR, which provides specific requirements for generators, transporters, and facility operators who handle spent lead-acid storage batteries (e.g., motor-vehicle batteries), except that the section has been divided into two separate sections for clarity. Section 66822, CCR, is more comprehensive and more stringent than existing federal requirements, which essentially exempt from federal regulation all except spent lead-acid batteries stored prior to reclamation, as specified in 40 CFR Part 266, Subpart G. Thus, the federal requirements are not being retained (as discussed in more detail elsewhere in this "Statement of Reasons").

Section 66266.80: This section is essentially the same as existing section 66822(a), CCR, which is being made a separate section for clarity. The proposed section addresses applicability of the Department's requirements for spent lead-acid storage batteries. Modifications are being made to section 66822(a), CCR, in new section 66266.80 to clarify, and to conform with the format of, the proposed regulations, as follows:

> "Chapter" is being changed to "division", and "section" is being changed to "article" to conform with the format of the proposed regulations.
>
> The words "handles or" and "handling or" are being deleted for clarity, because "handling" is being included in the definition of "management" in section 66260.10 of the proposed regulations. Thus, the deleted words are no longer needed.
>
> The words "Sections 66798, 66800, or 66802 of this chapter or in [the] following" are being deleted, because of the change of the existing subsection to a full section and because the cross-referenced sections could be interpreted to be circular, since the cross-referenced sections also reference existing section 66822, CCR. (The cross-referenced sections include information in addition to the section 66822 reference, so the circularity is debatable.)

Section 66266.81: Effective April 25, 1989 (Register 89, Nos. 17 and 33), existing section 66822, CCR was amended significantly, but those amendments were not shown in the original proposed regulations, because they had been separately adopted as emergency regulations and had not been publicly heard before the original proposed regulations were opened to public comment. The amendments were finalized effective August 14, 1989. Accordingly, as part of the first noticed revisions, proposed section 66266.81 is being modified as follows to reflect the new amendments:

In section 66266.81(a) (existing section 66822(a)(1), CCR) the cross-reference to subsection (a)(8) of the section is being changed to subsection (d).

Sections 66266.81(a)(4)(D) and (a)(5)(E) (existing sections 66822(a)(5)(D) and (a)(6)(E), CCR, respectively) are being repealed.

In section 66266.81(a)(8) (existing section 66822(a)(9), CCR) the words "owns or operates a facility which accepts cracked or otherwise" are being deleted and the words "treats spent or" are being added. Similarly, the words "spent", "or which disposes of spent lead-acid storage batteries shall comply with", "or the", and "pertaining to the owner or operator of a hazardous waste facility" are being deleted, and the words "is subject to" are being added.

Sections 66266.81(b),(c) and (d) are being added (existing sections 66822(b), (c) and (d), CCR). However, the cross-references in subsection (c) are being changed from "subsections (a)(5) and (a)(6)" to "subsections (a)(4) and (a)(5)" to conform with the format of the proposed regulations.

Since the above changes were part of a separate rule-making (except for conforming changes in numbering, etc. for purposes of the proposed regulations) which was completed in 1989, no further discussion of them appears in this "Statement of Reasons". Therefore, for purposes of this "Statement of Reasons", this section is essentially the same as existing subsections (a)(1-9), (b), (c) and (d) of section 66822, CCR, which are, as a group, being made a section for clarity. The new section lists requirements for generators, transporters, and operators of facilities that manage intact and damaged spent lead-acid storage batteries. Minor modifications are being made to subsections (a)(1-9) of section 66822, CCR, in new section 66266.81 to conform with the format of the proposed regulations and to correct obsolete language, as follows:

In all subsections of section 66266.81, the section 66822 subsection numbers are being revised to reflect the proposed section status.

In sections 66266.81(a) and (a)(1), the citations of the Vehicle Code are being reordered to reflect the format of the proposed regulations.

In sections 66266.81(a), (a)(1), (a)(2), (a)(3), (a)(4), (a)(4)(C), (a)(5) and (a)(5)(D), the words "handles or" and "handling and" are being deleted, because "handling" is being included in the definition of "management" in section 66260.10 of the proposed regulations. Thus, the deleted words are no longer unnecessary.

In sections 66266.81(a)(1-8), "chapter" is being changed to "division".

In sections 66266.81(a)(4)(A), (a)(5)(A), (a)(6)(A), and (a)(7)(A), "California Administrative Code" is being changed to The abbreviation of California Code of Regulations (i.e., "CCR") to conform with the state's renaming of all state codes of regulations, and the citations of the CCR are being reordered to reflect the format of the proposed regulations.

In sections 66266.81(a)(4)(A), (a)(4)(B), (a)(5)(A), (a)(5)(B), (a)(6)(A), (a)(6)(B), and (a)(7)(A), (a)(7)(B), the term "hazardous waste manifest" is being changed to "manifest" to reflect a change that was made in the state's regulations more than three years ago. At that time, the definition of "hazardous waste manifest" in section 66104, CCR, was deleted and the definition of "manifest" in section 66131, CCR, was added, but the change in terms was inadvertently omitted from section 66822, CCR.

In sections 66266.81(a)(4)(B) and (a)(4)(C), the words "his or her" and "he or she" are being deleted and the words "the generator's" and "the generator", respectively, are being added to eliminate references to gender, in order to conform with the format of the proposed regulations. Corresponding changes are being made for the same reason with respect to "transporter" and "owner or operator" in sections 66266.81(a)(5)(B) and (a)(5)(D), and in (a)(6)(B) and (a)(7)(B), respectively.

In sections 66266.81(a)(6)(D) and (a)(7)(D), references to Title 49, Code of Federal Regulations, are being reordered and abbreviated in conformance with the format of the proposed regulations.

At the end of section 66266.81, the "authority cited" and "reference" section numbers are being revised: to correct errors in existing section 66822, CCR; to conform with the format of the proposed regulations; or to conform with statutory changes (e.g., Health and Safety Code, section 25143) that were made after section 66822, CCR was adopted in 1985.

ARTICLE 8: REQUIREMENTS FOR MANAGEMENT OF RECYCLABLE MATERIALS USED IN AGRICULTURE:

Article Overview: This article is based on, and consists of, existing sections 66816, 66818, and 66820, CCR, which address specific requirements for generators, transporters, and facility operators who manage hazardous wastes to be used in agriculture. The state requirements differ considerably from the comparable federal requirements (i.e., 40 CFR Part 266, Subpart C) which address hazardous wastes used in agriculture (to some extent) under the concept of "use constituting disposal". Thus, the requirements in proposed Article 8 apply only to hazardous wastes that are not federally regulated (e.g., see section 66816(c)(4)(C), CCR).

Section 66266.110: This section is essentially the same as existing section 66816, CCR, except for some modifications to simplify the context and to conform with the format of the proposed regulations. The section establishes requirements for generators of recyclable materials used for agricultural purposes. The section includes requirements and a procedure for obtaining the Department's prior approval to ship unprocessed recyclable materials for direct agricultural use, as specified (among other provisions). The modifications to section 66816, CCR, in new section 66266.110 are as follows:

In section 66266.110(a) a cross-reference to proposed subsection (e) which defines the term "use in agriculture" is being added to the original proposed regulations as part of the second noticed revisions for clarity, because the lengthy phrase (described in the next paragraph) is being deleted in favor of that term, elsewhere in proposed Article 8. Also in section 66266.110(a) a cross-reference to proposed section 66266.20(c) and the word "or" are being deleted from the original proposed regulations as part of the second noticed revisions to reflect the deletion of proposed Article 3 (discussed elsewhere in this "Statement of Reasons") which contains that referenced section.

In sections 66266.110(a), (b) and (d), the phrase "as a fertilizer, soil amendment, agricultural mineral, or auxiliary soil and plant substance, or as a food for domestic livestock or wildlife," is being deleted for clarity. The phrase is no longer needed, because referenced subsection (e) uses that phrase in the definition of the term "use in agriculture" and applies that term and its definition throughout proposed Chapter 16.

In sections 66266.110(a)(1), (a)(1)(A)2.a., (a)(1)(A)2.b., (b), (c) and (c)(4)(A), "chapter" is being changed to "division", and in sections 66266.110(a)(1)(A)2.a., (a)(1)(A)2.b., (b), (c), (c)(4)(A) and (c)(4)(B), "Article" is being changed to "Chapter".

In section 66266.110(a)(1)(A), (a)(1)(B), (a)(1)(C) and (a)(3), the word "he" is being deleted and the words "the generator" are being added to eliminate references to gender, in order to conform with the format of the proposed regulations.

In sections 66266.110(a)(1) and (a)(3), the word "party" is being changed to "person" for clarity. "Party" is not defined, whereas "person" is defined in proposed section 66260.10, as well as in existing law (i.e., in Health and Safety Code section 25118).

In sections 66266.110(a)(1) and (b), the words "handling and" are being deleted, because "handling" is being included in the definition of "management" in proposed section 66260.10. Thus, the deleted words are no longer needed.

In sections 66266.110(a)(1), (a)(1)(A)2.b., (b), (c) and (c)(2)(B), phrases such as "of this chapter" are being deleted from references that included Title 22 section numbers, because the section numbers are unique. Thus, no additional descriptions are needed. These changes should simplify the regulations.

In section 66266.110(a)(1)(C), "California Administrative Code" is being changed to "California Code of Regulations" in conformance with the state's renaming of all codes in state regulations.

In section 66266.110(a)(2), the words "the ownership of the recyclable material is not to be transferred to another party for such agricultural use, but", "himself", and "he intends" are being deleted, and the words "recyclable" and "without transferring ownership of the material to another person", "the intended", and "of" are being added to clarify the language of the section and coincidentally to eliminate the use of the word "party" and of the word "he" for reasons discussed above.

In section 66266.110(c)(4)(B), the reference to Article 15 is being changed to Chapter 18 to conform with the renumbering of the proposed regulations.

In section 66266.110(c)(4)(C), the words "meets a characteristic established by, and/or is listed by, the United States Environmental Protection Agency pursuant to Public Law 94-580... et seq.)." are being deleted, and the words "is a RCRA hazardous waste." are being added to reflect the new definitions of "RCRA hazardous waste" and "non-RCRA hazardous waste" in Health and Safety Code sections 25117.9 and 25120.2.

In section 66266.110(e) a new subsection is being added to the original proposed regulations as part of the second noticed

revisions to define "use in agriculture" for purposes of clarifying proposed Article 8. The awkward phrase, "as a fertilizer soil amendment, agricultural mineral, or auxiliary soil and plant substance, or as a food for domestic livestock or wildlife", is being equated to "use in agriculture" for that reason.

At the end of section 66266.110, the "authority cited" and "reference" section numbers are being revised to correct errors in existing section 66816, CCR, or to conform with statutory changes (e.g., Health and Safety Code section 25143) that were made after section 66816 was adopted in 1985.

Section 66266.111: This section is essentially the same as existing section 66818, CCR, except for modifications to simplify the context and to conform with the format of the proposed regulations. The section sets forth the Department's requirements for transporters of recyclable materials which are to be used for agricultural purposes. The modifications to section 66818, CCR, in new section 66266.111 are the following:

The introductory phrase "except as provided otherwise in section 66266.20(c), a" is being deleted from the original proposed regulations as part of the second noticed revisions to reflect the deletion of proposed Article 3 (discussed elsewhere in this "Statement of Reasons") which contains the referenced section.

"Chapter" is being changed to "division" to conform with the format of the proposed regulations.

The phrase "as a fertilizer... or as a food for domestic livestock or wildlife ," is being deleted for clarity. The phrase is no longer needed, because proposed section 66266.110(e) includes that phrase in the definition of the term "use in agriculture" and applies that term and its definition throughout proposed Chapter 16.

The words "handling and" are being deleted, because "handling" is being included in the definition of "management" in section 66260.10 of the proposed regulations. Since the word "management" is already used in the section, the deleted words are not needed.

The words ", except as provided otherwise in Section 66800 of this chapter" are being deleted for clarity, because that cross-reference could be interpreted as circular, since the cross-referenced section also references existing section 66818, CCR. (The cross-referenced section includes information in addition to the section 66818 reference, so the circularity is debatable.)

At the end of section 66266.111, the "reference" section numbers are being revised to correct errors in existing section 66818, CCR.

Section 66266.112: This section is essentially the same as existing section 66820, CCR, except for modifications to simplify the context of, or to correct an error in, the regulation and to conform with the format of the proposed regulations. The section establishes the Department's requirements for facilities that use recyclable materials, either before or after processing, for agricultural purposes. The modifications to section 66820 in new section 66266.112 are as follows:

In section 66266.112(a), the introductory phrase "Except as provided otherwise in section 66266.20(c), a" is being deleted from the original proposed regulations as part of the second noticed revisions to reflect the deletion of proposed Article 3 (discussed elsewhere in this "Statement of Reasons") which contains the referenced section.

Also in section 66266.112(a), the words "one or both" are being deleted and the word "either" is being added to clarify the regulation by simplifying the wording. The word "and/" was deleted between two subsection references, because the word "or" alone conveys the same meaning in the context and simplifies the wording.

In section 66266.112(a)(1) and (a)(2) the phrase "as a fertilizer... or as a food for domestic livestock or wildlife." is being deleted for clarity. The phrase is no longer needed, because proposed section 66266.110(e) includes that phrase in the definition of the term "use in agriculture" and applies that term and its definition throughout proposed Chapter 16.

In sections 66266.112(a)(2), (b)(1), (b)(2), (c), (c)(1) and (c)(2), "chapter" is being changed to "division", and in sections 66266.112(a)(2), (b)(2), (c)(1), and (c)(2), "Article" is being changed to "Chapter" in conformance with the format of the proposed regulations.

In section 66266.112(b)(1), the words "handling and" are being deleted for clarity, because "handling" is being included in the definition of "management" in proposed section 66260.10. Since the word "management" is already used in the section, the deleted words are not needed.

In sections 66266.112(b)(1), (b)(2), (b)(3)(A), (b)(3)(B), (c), (c)(1) and (c)(2), phrases such as "of this chapter" are being deleted from references that included Title 22 section numbers and no article numbers, because the section numbers are unique. Thus, no additional descriptions are needed. These changes should simplify the proposed regulations.

In section 66266.112(b)(2), the words "chapter of" are being deleted to conform with the change in the cross-reference from "Article 4" to "Chapter 20".

In section 66266.112(b)(3)(A), the reference to section 66818(a)(2)(A) is an error that was not corrected when that referenced section was deleted from section 66818, CCR, more than three years ago. The referenced section was deleted, because during the regulations process at that time, the Department discovered that the Department could not require transporters to carry any documents in addition to the manifest for the same load of hazardous wastes, due to a federal law addressing that issue. Therefore, the requirement in section 66818, CCR, was deleted, but the reference to it in section 66820, CCR, was inadvertently overlooked. The proposed change would correct this oversight and would substitute the reference to the existing requirement (currently found in section 66816(a)(3), CCR, which is to be renumbered as new section 66266.110(a)(3)) for generators to obtain confirmation of the Department's approval prior to offsite shipment of recyclable materials for agricultural purposes, as specified.

In section 66266.112(c), the phrase "in agriculture as a fertilizer... or as a food for domestic livestock or wildlife." is being deleted and the phrase "used in agriculture" is being added for clarity. As discussed above, section 66266.110(e) defines the term "use in agriculture" to include the deleted phrase and applies the term and its definition throughout proposed Chapter 16. Thus, the deleted phrase is unnecessary.

In section 66266.112(c)(1), the word "he" is being deleted and the words "the operator" are being added to eliminate references to gender, in order to conform with the format of the proposed regulations.

In section 66266.112(c)(2) "chapter" is being changed to "division" to conform with the format of the proposed regulations. This change was inadvertently omitted from the original proposed regulations and thus, is being made as part of the first noticed revisions.

At the end of section 66266.112, the "authority cited" and "reference" section numbers are being revised to correct errors in existing section 66820, CCR, or to conform with statutory changes (e.g., Health and Safety Code section 25143) that were made after section 66820, CCR, was adopted in 1985.

ARTICLE 9: REQUIREMENTS FOR MANAGEMENT OF WASTE ELEMENTAL MERCURY:

Article Overview: This article addresses special requirements for generators, transporters and facility operators who manage waste elemental mercury. The article consists of one section, which is essentially the same as existing section 66823, CCR, except that the section is being amended to apply specifically to non-RCRA hazardous wastes. Otherwise the section would be less stringent than corresponding federal requirements, which have no comparably specific requirements for mercury, as discussed below.

Section 66266.120: This section is essentially the same as existing section 66823, CCR, except for modifications to ensure that the section is federally equivalent and to conform with the format of the proposed regulations. The section sets forth the Department's requirements for generators, transporters, and recyclers of waste elemental mercury, including exemptions from some requirements in order to promote recycling. The modifications to section 66823, CCR, in new section 66266.120 are as follows:

In section 66266.120(a), the phrases "which is a non-RCRA hazardous waste" and "provisions with respect to that mercury" are being added to ensure that waste elemental mercury is exempt from federal requirements in order to qualify for the special requirements in the subject section ("non-RCRA hazardous waste" is defined in Health and Safety Code section 25117.9). Ordinarily, these additions would probably not be needed (due to the federal 100 kg-per-month, minimum-quantity limit before substantive federal regulation of non-acutely hazardous wastes begins), if the ten pounds (i.e., 4.5 kg) of waste elemental mercury included the weight of whatever contaminants were present in the mercury. However, section 66823, CCR, has been interpreted as being applicable to ten pounds of mercury dispersed in whatever weight of broken glass or other material happens to be present. If this interpretation were extended to include recyclable materials containing waste elemental mercury which are not exempt from federal regulation, because (for example) the materials exceed the 100 kg-per-month federal limit, the section 66823, CCR, special provisions would not be federally equivalent. Therefore, section 66823, CCR, could not apply, due to the provisions of Health and Safety Code section 25159, et seq., requiring federal equivalence of Department requirements. Consequently, the addition of the subject phrases is needed for clarification to notify the reader that the section 66823, CCR, provisions are not unlimited in applicability. The added phrases do not change the degree of regulation imposed by the combination of section 66823, CCR, and Health and Safety Code section 25159 et seq.

In section 66266.120(a)(1), "chapter" is being changed to "division" to conform with the format of the proposed regulations.

In section 66266.120(a)(3), the word "he" is being deleted and the words "the operator" are being added in order to eliminate references to gender in conformance with the format of the proposed regulations.

At the end of section 66266.120, the "authority cited" and "reference" section numbers are being revised to correct errors in existing section 66823, CCR, or to conform with statutory changes (e.g., Health and Safety Code, section 25143) made after section 66823 was adopted in 1985.

SUBPART E: (DELETED) USED OIL BURNED FOR ENERGY RECOVERY:

Subpart Overview: This subpart establishes special federal requirements applicable to used oil burned for energy recovery in devices other than incinerators. The federal requirements define "used oil" and address used oil, as well as fuel derived from used oil, as "used oil fuels". Used oil fuels that meet federal specifications set forth in this subpart are virtually unregulated, except for minor record keeping, etc., requirements, also set forth in this subpart. (Categories of used oil other than used oil fuels are generally exempt from federal regulation under 40 CFR section 261.6(a)(3).) Used oil fuels that do not meet the federal specifications (i.e., "off-specification used oil fuels") are subject to the special provisions of this subpart, which are less stringent than the federal provisions applicable to other hazardous wastes. For example, the provisions of this subpart essentially exempt generators, etc., from manifest requirements and burners from storage facility permit requirements, all of which requirements apply to other hazardous wastes managed in the same way. Used oil fuels that are mixed with hazardous wastes are not eligible for the special provisions of this subpart, but instead are subject to more stringent federal regulations under another subpart (i.e., 40 CFR Part 266, Subpart D), which has been incorporated (in part) in the proposed regulations as Article 4 of Chapter 16.

Existing state requirements specifically applicable to used oil appear primarily in Article 13, Chapter 6.5, Division 20 of the Health and Safety Code (designated "Article 13" hereafter). Article 13 defines "used oil" in a manner similar to corresponding federal regulations, but is not limited to addressing used oil burned for energy recovery. Unlike federal regulations, Article 13 addresses virtually all pertinent aspects of used oil management. Used oils that meet state specifications set forth in Article 13 (which correspond to, and are at least equivalent to, federal specifications in 40 CFR section 266.40) are virtually unregulated, except for minor record keeping, etc., requirements. Used oils that do not meet the state specifications (no special state designation is given them) are subject to all applicable provisions of Article 13. The provisions of Article 13 are essentially the same as those applicable to any other hazardous wastes, except for modified manifesting procedures and some other minor differences. However, Article 13 is more stringent than corresponding federal

regulations, because Article 13 generally prohibits the burning of used oil as fuel, unless such burning is authorized under other provisions of state law (see Health and Safety Code section 25250.5(a)). Since the only other provisions of state law applicable to used oil burned as fuel are the provisions addressing recycling of hazardous wastes burned for energy recovery (i.e., Health and Safety Code sections 25143.2(a), (e)(3) and (e)(7)) and since those provisions generally require full regulation of the fuels as hazardous wastes destined for incineration (except for the modified manifesting procedures and some other minor differences allowed under Article 13) the state requirements are generally more stringent than their federal counterparts.

Although existing state laws applicable to used oil do not use the term "used oil fuel" or specifically address "fuels produced from used oil by processing, blending or other treatment" (except to prohibit blending or diluting used oil with crude or virgin oil to meet "recycled oil" standards under Health and Safety Code Section 25250.1(c)(7)), the Department has interpreted state law (e.g., Health and Safety Code sections 25250.1(c), (d) and (e), and 25250.4) to mean that used oil which is recycled must meet state specifications after it is recycled, or it must continue to be managed as if it were unrecycled used oil, even though it is a product. Thus, fuel produced from used oil by processing, blending or other treatment must meet state specifications (which correspond to, or are at least equivalent to, federal specifications in 40 CFR section 266.40) before it can be marketed, etc., without being regulated as if it were unprocessed used oil.

Since the state laws discussed above are generally at least as stringent as the corresponding federal regulations, the federal regulations in this subpart are being deleted. The few instances where state laws are less stringent are addressed in Articles 4 and/or 6 of the proposed regulations. The specific sections of the subpart that are being deleted, and the Department's reasons for doing so, are set forth below. The discussions of the few specific sections being deleted, but containing more stringent federal requirements, cross-reference the sections in Articles 4 and 6 of the proposed regulations where those requirements are being added.

<u>Section 266.40</u>: This section explains that the special federal regulations for used oil burned for energy recovery ("used oil fuels") apply only to: used oil burned for energy recovery in boilers or industrial furnaces (as defined in 40 CFR section 260.10) that are not regulated under the federal incineration standards of Subparts O in Parts 264 and 265, as specified. This section consists of five (5) subsections; each is discussed separately below.

Section 266.40(a) addresses the issues already mentioned in the preamble of this discussion and additionally defines "used oil fuel" as essentially used oil burned for energy recovery

in boilers or industrial furnaces that are not incinerators, as specified, and includes fuels produced from used oil by processing, blending or other treatment. Existing state laws and regulations do not distinguish "used oil fuels" from any other used oil. Burning of used oil for energy recovery is either prohibited or is authorized only in devices fully regulated by the Department as incinerators, regardless of type or purpose (Health and Safety Code sections 25143.2(a), (e)(3) and (e)(7), 25250.4 and 25250.5(a) and sections 66798 through 66802, CCR; the latter are being retained as new sections 66266.3 through 66266.5, CCR). Thus, the state's requirements are more stringent than corresponding federal requirements in 40 CFR section 266.40(a), so the 40 CFR subsection is being deleted.

Section 266.40(b) defines "used oil" essentially as it is defined in Health and Safety Code section 25250.1(a)(1), except that state law (Health and Safety Code sections 25250.1(a)(2)-(5)) identifies various examples of such oil, in addition. Thus, there is no need to repeat the statutory definition in the proposed regulations, so section 266.40(b) is being deleted.

Section 266.40(c) directs the reader to the federally more stringent 40 CFR Part 266, Subpart D requirements for used oil mixed with hazardous wastes and establishes a rebuttable presumption that used oil has indeed been mixed with halogenated hazardous wastes listed in 40 CFR Part 261, Subpart D, if it contains more than 1,000 ppm of total halogens. A person may rebut the presumption by showing that the used oil does not contain significant quantities of 40 CFR Part 261, Appendix VIII, halogenated hazardous constituents.

Existing state laws and regulations do not contain such a rebuttable presumption provision (such a provision is to be added with modification in proposed section 66266.30(c), discussed elsewhere in this "Statement of Reasons"), but do all of the following: define "used oil" in more detail than federal regulations (see Health and Safety Code section 25250.1(a), compared with 40 CFR section 266.40(b)); prohibit the intentional contamination of used oil with other hazardous wastes, except minor quantities of vehicle fuel (Health and Safety Code section 25250.7); and prohibit the burning of used oil, unless authorized under other provisions of law (Health and Safety Code section 25250.5(a)). Therefore, generally used oil (as defined) cannot legally contain other hazardous wastes of any kind (except vehicle fuel in small amounts, unless the contamination was accidental) and cannot be burned for energy recovery or any other purpose, unless (as a minimum) the used oil is managed as hazardous waste destined for incineration (the incinerator provisions are the only "other provisions of [state] law" or regulation applicable to burning of recyclable hazardous wastes (pursuant to Health and

Safety Code sections 25143.2(a), (e)(3) and (e)(7)). State law is generally more stringent than 40 CFR section 266.40(c), because state law: is not limited to addressing contamination of used oil with halogens; prohibits mixing of used oil with other hazardous wastes, instead of simply acknowledging that such mixed wastes exist; and imposes the Department's full hazardous waste control requirements (except for modified manifesting procedures and other minor differences), including incinerator requirements, on used oil whether it is contaminated or not. Thus, except for the rebuttable presumption provision retained as proposed section 66266.30(c), 40 CFR section 266.40(c) is being deleted from the proposed regulations.

Section 266.40(d) essentially limits the definition of "used oil" (and thus limits eligibility for the special requirements of 40 CFR Part 266, Subpart E) to used oil that is characteristically hazardous waste which has not been mixed with other hazardous waste, and to used oil containing hazardous waste generated only by small quantity generators.

Existing state laws and regulations generally regulate used oil more stringently than the 40 CFR Part 266, Subpart E regulations, because (for example) the 40 CFR provisions do not require burners of used oil to obtain a storage facility permit, whereas state law provisions do (Health and Safety Code section 25250.16), regardless whether the used oil is only characteristically hazardous. Also, state requirements generally provide no special regulation for small-quantity generators of used oil or of any other hazardous waste, or of combinations of used oil and hazardous waste. Thus, state laws and regulations are more stringent than section 266.40(d), so that section is being deleted from the proposed regulations.

Section 266.40(e) provides exemptions from most of the 40 CFR Part 266, Subpart E, requirements for used oil burned for energy recovery, if it meets the federal specifications. (Such used oil is subject only to minimal analysis and record keeping requirements discussed below under 40 CFR section 266.43.) The subsection also designates used oil which exceeds the federal specifications as "off-specification used oil fuel". That is the oil subject to the majority of the 40 CFR Part 266, Subpart E, requirements.

Existing state law (Health and Safety Code section 25250.1(c)) contains some exemptions based on the same specifications as the federal specifications, but (for example) state law adds a specification for PCB content and includes a more stringent specification for lead content. Thus, state law is more stringent than 40 CFR section 266.40(e), so that section is not being adopted as part of the proposed regulations.

Section 266.41: This section consists of two subsections which limit the applicability of the 40 CFR Part 266, Subpart E, requirements. Under section 266.41(a), persons are allowed to market "off-specification used oil fuel" only to burners or to other marketers, all of whom have notified USEPA of their used oil management activities, as specified, and to burners who burn the used oil in boilers or industrial furnaces, as specified. Section 266.41(b) allows burning of "off-specification used oil fuel" only in boilers and industrial furnaces, as defined in 40 CFR Section 260.10.

Existing state laws and regulations provide no special requirements for the state equivalent of "off-specification used oil fuel". State law prohibits the burning of used oil unless authorized under other provisions of law (Health and Safety Code section 25250.5(a)) and under those other provisions of law, the burner must have a Department permit to operate an incinerator, regardless whether boilers, industrial furnaces, space heaters, or incinerators are used. Since the burner is subject to the Department's permit requirements, the burner must also comply with the Department's notification requirements. Similarly, marketers of "off-specification used oil fuel" are generally subject to the Department's permit requirements, and thus to the Department's notification requirements, either because they are operators of storage facilities or operators of transfer facilities, or the marketers are subject to the Department's generator requirements, as set forth under Health and Safety Code section 25250.24. Therefore, state law is more stringent than 40 CFR Section 266.41, so that section is not being adopted as part of the proposed regulations.

Section 266.42: This section exempts from federal regulation generators of used oil burned for energy recovery, unless they market used oil directly to burners or burn the used oil themselves (other federal requirements, discussed below, then apply). Existing state laws and regulations provide no such exemption for generators of used oil, regardless of its destiny, except for modified manifesting requirements allowed under Health and Safety Code section 25250.8, and other minor exceptions. Therefore, state law is more stringent than 40 CFR section 266.42, so that section is not being adopted as part of the proposed regulations.

Section 266.43: This section addresses requirements for marketers of used oil burned for energy recovery, and exempts specified persons from those requirements. The section consists of two subsections; each is discussed separately below.

> Section 266.43(a) defines and describes "marketers" of used oil fuel, and excludes from the definition, description, and federal regulation: used oil generators, and collectors who transport used oil from such generators, provided that they do not market directly to persons who burn it for energy recovery (except to persons who burn the oil incidental to processing

it); and persons who market only used oil fuel that meets federal specifications in 40 CFR section 266.40(e), and who are not the first person to claim that the used oil meets the specification. Existing state laws and regulations do not distinguish marketers from anyone else who handles used oil or other hazardous wastes. Thus, such persons are subject to the Department's generator, transporter and facility operator requirements, pursuant to Health and Safety Code Section 25250.24 (except for the modified manifesting procedures under Health and Safety Code section 25250.8, discussed further below, and for some other minor exceptions). Since state law is more stringent than 40 CFR section 266.43(a), that section is not being adopted as part of the proposed regulations.

Section 266.43.(b) establishes requirements for marketers of off-specification used oil fuel, including: notification of used oil management activities (in addition to any prior RCRA section 3010 notification); compliance with an invoice system instead of a manifest system; compliance with prior-to-shipment receipt of notification from a burner or from other marketers, certifying compliance with federal used oil notification requirements and (for burners) certifying that the oil will be burned only in a boiler or industrial furnace; certification to other marketers of compliance with federal used oil notification requirements; and record keeping requirements (for on-specification used oil fuel, copies of analyses and operating log records must be maintained, as specified; for "off-specification used oil fuel", invoices must be maintained, as specified).

Existing state laws and regulations do not distinguish marketers from generators, transporters or facility operators who handle used oil or any other hazardous wastes, or combinations of used oil and such wastes (Health and Safety Code section 25250.24). Thus, marketers must generally comply with all applicable state hazardous-waste generator, transporter and facility operator requirements. However, with some exceptions (specifically the federal operating log requirements of 40 CFR section 266.43(b)(6)(i), which are being added as part of proposed section 66266.50), state law includes federally comparable record keeping requirements for used oil that meets state specifications and that is destined for any purpose (Health and Safety Code sections 25250.18 and 25250.19). State law also includes a federally comparable invoice system and record keeping requirements for used oil that does not meet state specifications, but that is destined for any purpose (Health and Safety Code section 25250.8). Thus, state law is more stringent than 40 CFR section 266.43(b), so that section is not being adopted as part of the proposed regulations.

<u>Section 266.44</u>: This section requires burners of off-specification used oil fuel burned for energy recovery to comply with the

following: notification of used oil management activities, in addition to any prior RCRA section 3010 notification (burners who burn used oil in space heaters, do not have to notify) as specified; notification to marketers of compliance with federal notification requirements and use of oil only in boilers or industrial furnaces; and record keeping of invoices, applicable analyses, and certifications to marketers (for 3 years), unless analyses document that the used oil meets federal specifications.

Existing state laws and regulations do not distinguish burners of off-specification used oil fuel from operators of hazardous waste incinerators, and regulate them as such. Thus, burners must comply with the Department's permit requirements which include notification requirements, among many others. Therefore, state law is more stringent than 40 CFR section 266.44, so that section is not being adopted as part of the proposed regulations.

SUBPART F: (DELETED) RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY:

Subpart Overview and Section 266.70: This subpart consists of only one section, 40 CFR section 266.70, which identifies "precious metals" and sets forth specific requirements for the management of recyclable materials containing economically recoverable quantities of precious metals that are used for precious metals recovery. The section imposes federal notification and manifesting requirements on persons who generate, transport and/or store such recyclable materials. In addition, the section requires persons who store such materials to maintain specified records to document that the materials are not being "speculatively accumulated". If they are being "speculatively accumulated", federal storage facility permit requirements, among others, are imposed.

Existing state laws and regulations do not distinguish recyclable hazardous wastes (i.e., recyclable materials) containing precious metals in economically recoverable quantities from any other recyclable hazardous wastes. Thus, they are subject to: full Department regulation as any other hazardous wastes (Health and Safety Code section 25143.2(a)); full generator and transporter requirements; and full hazardous waste facility operator requirements, including permit requirements for the storage facility as well as for the recycling process itself (regardless of speculative accumulation issues). Therefore, state laws and regulations are more stringent than 40 CFR section 266.70, so that section is not being adopted as part of the proposed regulations.

SUBPART G: (DELETED) SPENT LEAD-ACID BATTERIES BEING RECLAIMED:

Subpart Overview and Section 266.80: This subpart consists of one section, 40 CFR section 266.80, which establishes special requirements for management of spent lead-acid batteries destined for reclamation. The requirements apply only to persons who store and reclaim such batteries. (Persons who generate, collect,

transport, and/or store, but do not reclaim, batteries are exempt from federal regulation.) The requirements for persons who store and reclaim batteries include all federal requirements (except specified waste analysis and manifesting requirements) applicable to operators of hazardous waste storage facilities (the recycling process itself, i.e., the reclamation process, is exempt under 40 CFR section 261.6(c)(1)).

Existing state laws and regulations are more stringent than 40 CFR section 266.80, because section 66822, CCR imposes some minimal requirements on generators, collectors and transporters of batteries, and imposes storage facility requirements for storage of specified quantities of batteries for longer than specified times, except that operators of storage and reclamation facilities are subject to full hazardous waste facility operator requirements covering storage and reclamation activities. Therefore, state laws and regulations are more stringent than 40 CFR section 266.80, so that section is not being adopted as part of the proposed regulations.