

TEXT OF REGULATIONS

Department Reference Number: R-2016-03

Office of Administrative Law Notice File Number: Z-2017-0912-12

DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

CHAPTER 10. Hazardous Waste Management System: General

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

§ 66260.10. Definitions.

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

...

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

...

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

...

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

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

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

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

9 ~~(a)(4)~~ The owner or operator of a hazardous waste transfer, treatment, storage, or disposal
10 facility shall ensure that facility ~~Facility-personnel shall successfully complete a training~~
11 program through ~~of-classroom, computer-based or electronic~~ instruction, or on-the-job
12 training that teaches facility personnel ~~them~~ to perform their duties in a way that ensures the
13 facility's compliance with the requirements of this chapter and section 5192, subsection (p),
14 of Title 8, California Code of Regulations. Facility personnel engaged in shipping hazardous
15 waste shall be triennially trained commensurate with their responsibilities to meet the
16 requirements in section 172.704 of Title 49, Code of Federal Regulations.

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

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

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

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

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

34 (C) communications or alarm systems;

35 (D) response to fires or explosions;

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

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

38 (G) self-protection measures; and

39 (H) accident prevention methods.

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

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

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

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

7
8 *Note: Authority cited: Sections 208, 25150, ~~and~~ 25159, 25200.21, 58004 and 58012, Health*
9 *and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR*
10 *Section 264.16.*

11
12 ...
13
14 **§ 66264.101. Corrective Action for Waste Management Units.**

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

20 (b) The owner or operator shall provide a financial assurance mechanism for corrective
21 action to the Department within 90 days of the Department's approval of a corrective
22 measures implementation workplan or a Department-approved equivalent. The financial
23 assurance mechanism must consist of one of the options specified in section 66264.143.
24 The owner or operator shall establish the financial assurance mechanism to allow the
25 Department access to the funds to undertake corrective measures implementation tasks if
26 the owner or operator is unable or unwilling to undertake the required tasks. If the owner or
27 operator proposes to use the financial test or corporate guarantee as the financial
28 assurance mechanism for corrective action, the owner or operator shall also establish a
29 process that allows the Department access to the funds to undertake corrective measures
30 implementation tasks if the department determines that the owner or operator is unable or
31 unwilling to undertake the required tasks. Any financial assurance mechanism or process
32 proposed by the owner or operator shall be subject to the Department's approval.

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

42 ~~(c)(d)~~ Where necessary to protect human health or the environment, the
43 owner or operator shall implement corrective actions beyond the facility boundary, ~~where necessary~~
44 to protect human health or the environment, unless the owner or operator demonstrates to

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1 the satisfaction of the Department, that despite the owner's or operator's best efforts, the
2 owner or operator was unable to obtain the necessary permission to undertake such
3 actions. The owner or operator is not relieved of all responsibility to clean up a release that
4 has migrated beyond the facility boundary where off-site access is denied. On-site
5 measures to address such release will be determined on a case-by-case basis. Assurance
6 of financial responsibility for such corrective action shall be provided.

7
8 *Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25200.21, 25245, 25355.5,*
9 *25356.9, 25358.3, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections*
10 *25150, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health*
11 *and Safety Code; 40 CFR Section 264.101.*

12
13 ...

14
15 **§ 66264.143. Financial Assurance for Closure.**

16 (a) Closure trust fund.

17 ...

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

19 ...

20 (c) Surety bond guaranteeing performance of closure.

21 ...

22 (d) Closure letter of credit.

23 ...

24 (e) Closure insurance.

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

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

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

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

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1 ...

2 (f) Financial test and guarantee for closure.

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

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

- 8 1. two of the following three ratios: a ratio of total liabilities to net worth
9 less than 2.0; a ratio of the sum of net income plus depreciation, depletion
10 and amortization to total liabilities greater than 0.1; and a ratio of current
11 assets to current liabilities greater than 1.5; ~~and~~
12 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
13 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
14 3. net working capital and tangible net worth each at least six times the
15 sum of the current closure and postclosure cost estimates and the current
16 plugging and abandonment cost estimates; and
17 3. 4. tangible net worth of at least \$10-20 million; and
18 4-5. assets located in the United States amounting to at least 90 percent
19 of total assets or at least six times the sum of the current closure and
20 postclosure cost estimates for all of the owner's or operator's hazardous
21 waste facilities regulated by the Department and the current plugging and
22 abandonment cost estimates.

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

- 24 1. a current rating for his or her most recent bond issuance of AAA, AA, A₁,
25 or BBB as issued by Standard and Poor's or Aaa, Aa, A₁ or Baa as issued
26 by Moody's; ~~and~~
27 2. tangible net worth at least six times the sum of the current closure and
28 postclosure cost estimates and the current plugging and abandonment
29 cost estimates; ~~and~~
30 3. tangible net worth of at least \$10-20 million; and
31 4. assets located in the United States amounting to at least 90 percent of
32 total assets or at least six times the sum of the current closure and
33 postclosure cost estimates for all of the owner's or operator's hazardous
34 waste facilities regulated by the Department and the current plugging and
35 abandonment cost estimates.

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

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

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

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

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

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

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

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

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

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

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

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

(g) Use of multiple financial mechanisms.

...

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

...

(i) Alternative Financial Mechanism for Closure Costs.

...

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

...

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

§ 66264.144. Cost Estimate for Postclosure Care.

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

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

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

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1 (b) During the active life of the facility, the owner or operator shall adjust the postclosure
2 cost estimate for inflation within 60 days prior to the anniversary date of the establishment of
3 the financial instrument(s) used to comply with section 66264.145. For owners or operators
4 using the financial test or corporate guarantee, the postclosure cost estimate shall be
5 updated for inflation within 30 days after the close of the firm's fiscal year and before the
6 submission of updated information to the Department as specified in section
7 66264.145(f)(5). The adjustment shall be made by recalculating the postclosure cost
8 estimate in current dollars or by using an inflation factor derived from the most recent
9 Implicit Price Deflator for Gross National Product published by the U.S. Department of
10 Commerce in its Survey of Current Business as specified ~~in subsections (b)(1) and (b)(2) of~~
11 ~~this section~~ paragraphs (1) and (2) of this subsection. The inflation factor is the result of
12 dividing the latest published annual Deflator by the Deflator for the previous year.

13 Postclosure care cost estimates must be adjusted as follows:

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

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

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

23 (d) ~~The An~~ owner or operator shall keep the following at the facility during the operating life
24 of the facility: the latest postclosure cost estimate prepared in accordance with ~~section~~
25 ~~66264.144(a) and (c)~~ subsections (a) and (c) and, when this estimate has been adjusted in
26 accordance with subsection (b)~~section 66264.144(b)~~, the latest adjusted postclosure cost
27 estimate.

28
29 *Note: Authority cited: Sections ~~208~~, 25150, 25159, 25159.5, 25200.21, and 25245, 58004 and*
30 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR*
31 *Section 264.144.*

32

33 **§ 66264.145. Financial Assurance for Postclosure Care.**

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

40 (a) Postclosure trust fund.

41 ...

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

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1 ...

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

3 ...

4 (d) Postclosure letter of credit.

5 ...

6 (e) Postclosure insurance.

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

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

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

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

26 ...

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

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

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

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

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

39 3. net working capital and tangible net worth each at least six times the
40 sum of the current closure and postclosure cost estimates and the current
41 plugging and abandonment cost estimates; ~~and~~

42 ~~3.4.~~ tangible net worth of at least \$40-20 million; and

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1 4.5. assets in the United States amounting to at least 90 percent of total
2 assets or at least six times the sum of the current closure and postclosure
3 cost estimates for all of the owner's or operator's hazardous waste
4 facilities regulated by the Department and the current plugging and
5 abandonment cost estimates.

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

- 7 1. a current rating for his or her most recent bond issuance of AAA, AA, A₁,
8 or BBB as issued by Standard and Poor's or Aaa, Aa, A₁ or Baa as issued
9 by Moody's; ~~and~~
- 10 2. tangible net worth at least six times the sum of the current closure and
11 postclosure cost estimates and the current plugging and abandonment
12 cost estimates; ~~and~~
- 13 3. tangible net worth of at least ~~\$10~~20 million; and
- 14 4. assets located in the United States amounting to at least 90 percent of
15 total assets or at least six times the sum of the current closure and
16 postclosure cost estimates for all of the owner's or operator's hazardous
17 waste facilities regulated by the Department and the current plugging and
18 abandonment cost estimates.

19 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
20 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1
21 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer
22 (section ~~66264.151~~66265.154, subsection (f)). The phrase "current plugging and
23 abandonment cost estimates" as used in subsection (f)(1) of this section refers to the
24 cost estimates required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter
25 from the owner's or operator's chief financial officer.

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

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

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

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

- 37 1. a statement that the independent certified public accountant has
38 compared the data which the letter from the chief financial officer specified
39 as having been derived from the independently audited, year-end financial
40 statements for the latest fiscal year with the amounts in such financial
41 statements; and

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1 2. ~~in connection with that procedure, no matters came to the independent~~
2 ~~certified public accountant's attention which caused a belief that the~~
3 ~~specified data should be adjusted.~~ identification and description of the
4 specific accounting standards and guidance relied upon to prepare the
5 report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (g) Use of multiple financial mechanisms.

39 ...

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

41 ...

42 (i) Alternative Financial Mechanism for Postclosure Care.

1 ...
2 (j) Release of the owner or operator from financial assurance requirements for postclosure
3 care.
4 ...

5
6 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, ~~and 25245~~, 58004 and
7 58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety
8 Code; 40 CFR Section 264.145.*

9
10 **§ 66264.146. Use of a Mechanism for Financial Assurance of ~~Both-Closure, and Post-~~**
11 **Closure Care, and Corrective Action.**

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

20
21 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, ~~and 25245~~, 58004 and
22 58012, Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety
23 Code; 40 CFR Section 264.146.*

24
25 **§ 66264.147. Liability Requirements.**

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

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

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

- 37 1. an admitted carrier, licensed to transact the business of insurance in
38 California; or
39 2. a nonadmitted carrier eligible to provide insurance as an excess or
40 surplus lines insurer, in one or more states California. Any excess or
41 surplus insurance relied upon by the owner or operator to meet the
42 requirements of this subsection shall be placed by and through an excess

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1 or surplus lines broker currently licensed by the California Department of
2 Insurance, and shall be underwritten by a surplus lines insurer that is on
3 the California Department of Insurance's List of Approved Surplus Line
4 Insurers as being eligible to cover risks in California.

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

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

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

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

21 ...

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

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

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

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

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

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

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

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

27 ...

28 (c) Request for variance.

29 ...

30 (d) Adjustments by the Department.

31 ...

32 (e) Period of coverage.

33 ...

34 (f) Financial test for liability coverage.

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

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

40 1. net working capital and tangible net worth each at least six times the
41 amount of liability coverage to be demonstrated by this test; and

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- 1 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
2 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
3 3. tangible net worth of at least \$1020 million; and
4 3.4. assets in the United States amounting to either:
5 a. at least 90 percent of total assets; or
6 b. at least six times the amount of liability coverage to be
7 demonstrated by this test.
- 8 (B) The owner or operator shall have all of the following:
9 1. a current rating for the most recent bond issuance of AAA, AA, A₁ or
10 BBB as issued by Standard and Poor's, or Aaa, Aa, A₁ or Baa as issued
11 by Moody's; ~~and~~
12 2. tangible net worth of at least \$1020 million; ~~and~~
13 3. tangible net worth at least six times the amount of liability coverage to
14 be demonstrated by this test; and
15 4. assets in the United States amounting to either:
16 a. at least 90 percent of total assets; or
17 b. at least six times the amount of liability coverage to be
18 demonstrated by this test.
- 19 (2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section
20 refers to the annual aggregate amounts for which coverage is required under
21 subsections (a) and (b) of this section.
- 22 (3) To demonstrate that this test can be met, the owner or operator shall submit the
23 following items to the Department:
- 24 (A) a letter signed by the owner's or operator's chief financial officer and worded
25 as specified in section 66264.151, subsection (g). The letter shall be on the
26 official letterhead stationary of the owner or operator, and shall contain an
27 original signature. An owner or operator may use the financial test to
28 demonstrate both assurance for closure or postclosure care, as specified by
29 sections 66264.143, subsection (f), 66264.145, subsection (f), 66265.143,
30 subsection (e) and 66265.145, subsection (e), and liability coverage as specified
31 in subsections (a) and (b) of this section. If an owner or operator is using the
32 financial test to cover both forms of financial responsibility, a separate letter is not
33 required;
- 34 (B) a copy of the owner's or operator's financial statements and the independent
35 certified public accountant's report on examination of the owner's or operator's
36 financial statements for the latest completed fiscal year;
- 37 (C) a special report from the owner's or operator's independent certified public
38 accountant to the owner or operator ~~stating that~~ includes the following:
39 1. a statement that the independent certified public accountant has
40 compared the data which the letter from the chief financial officer specifies
41 as having been derived from the independently audited, year-end financial

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1 statements for the latest fiscal year with the amounts in such financial
2 statements; and
3 ~~2. in connection with that procedure, no matters came to the independent~~
4 ~~certified public accountant's attention which caused him or her to believe~~
5 ~~that the specified data should be adjusted.~~ identification and description of
6 the specific accounting standards and guidance relied upon to prepare the
7 report.

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

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

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

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

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

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

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

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

4 (g) Guarantee for liability coverage.

5 ...

6 (h) Letter of credit for liability coverage.

7 ...

8 (i) Payment bond for liability coverage.

9 ...

10 (j) Trust fund for liability coverage.

11 ...

12 (k) Liability Coverage -Alternative Mechanism.

13 ...

14
15 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*
16 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40*
17 *CFR Section 264.147.*

18

19 ...

20

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

22 ...

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

27

28 CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

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

30 California License Number: [insert license number]

31 Admitted [] Excess or Surplus Lines []

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

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

37 Face Amount:

38 Policy Number:

39 Effective Date:

40

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

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

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

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

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

27 The Insurer certifies that it is:

- 28 (A) an admitted carrier, licensed to transact the business of insurance in California; or
29 (B) a nonadmitted carrier eligible to provide insurance as an excess or surplus lines
30 insurer in California. Any excess or surplus insurance relied upon by the owner or
31 operator to meet the requirements of this subsection shall be placed by and through an
32 excess or surplus lines broker currently licensed by the California Department of
33 Insurance, and shall be underwritten by a surplus lines insurer that is on the California
34 Department of Insurance's List of Approved Surplus Line Insurers as being eligible to
35 cover risks in California.

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

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

41 The parties below certify that the wording of this certificate is identical to the wording

1 specified in California Code of Regulations, title 22, section 66264.151, subsection (e)
2 and is being executed in accordance with the requirements of California Code of
3 Regulations, title 22, division 4.5, chapters 14 and 15, article 8.

4
5 [Authorized signature for Insurer]
6 [Name of person signing]
7 [Title of person signing] Signature
8 of witness or notary: [Date]
9

10 (f) A letter from the chief financial officer, as specified in section 66264.143, subsection (f)
11 or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section
12 66265.145, subsection (e) of this division, shall be worded as follows, except that
13 instructions in brackets are to be replaced with the relevant information and the brackets
14 deleted:

15
16 LETTER FROM CHIEF FINANCIAL OFFICER

17 Department of Toxic Substances Control Financial
18 Responsibility Section
19 8800 Cal Center Drive
20 Sacramento, California 95826
21

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

26 [Fill out the following paragraphs regarding facilities/transportable treatment units (TTU)
27 and associated cost estimates. If your firm has no facilities/TTUs that belong in a particular
28 paragraph, write "None" in the space indicated. For each facility/TTU, include its EPA
29 Identification Number, name, address and current closure and/or postclosure cost
30 estimates. Identify each cost estimate separately as to whether it is for closure or
31 postclosure care.]
32

33 1. This firm is the owner or operator of the following facilities/TTUs for which financial
34 assurance for closure or postclosure care is demonstrated through the financial test
35 specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section
36 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of
37 Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or
38 postclosure cost estimates covered by the test are shown for each facility/TTU:_____.

39
40 2. This firm guarantees, through the guarantee specified in section 66264.143,
41 subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and

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1 section 66265.145, subsection (e) of California Code of Regulations, title 22, division
2 4.5, chapter 14 and 15, article 8, the closure and/or postclosure care of the following
3 facilities/TTUs owned or operated by the guaranteed party. The current cost estimates
4 for the closure or postclosure care so guaranteed are shown for each facility/TTU:_____.

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

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

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

31
32 5. This firm is using the financial test, or its equivalent, to provide financial assurance or
33 guarantee to the following governmental agencies: [list each agency and the amount
34 assured]
35

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

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

42 The fiscal year of this firm ends on [insert month, day]. The figures for the following items

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 marked with an asterisk are derived from this firm's independently audited, year-end
2 financial statements for the latest completed fiscal year, ended [insert date].

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

4 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of sections 66264.143 and
5 66264.145, or of paragraph (e)(1)(A) of sections 66265.143 and 66265.145 of this division
6 are used. Fill in Alternative II of the criteria of paragraph (f)(1)(B) of sections 66264.143
7 and 66265.145, or of paragraph (e)(1)(B) of sections 66265.143 and 66265.145 of this
8 division are used.]

9
10 ALTERNATIVE I

11
12 1. Sum of current closure and postclosure cost estimate (total of all cost estimates
13 shown in the ~~five~~ six paragraphs above) \$ _____

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

17 *3. Tangible net worth \$ _____

18 *4. Net worth \$ _____

19 *5. Current assets \$ _____

20 *6. Current liabilities \$ _____

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

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

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

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

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

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

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

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

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

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

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

35 18. Current corporate credit rating of this firm,
36 and name of rating service

37 19. Date of corporate credit rating
38 _____

39 ALTERNATIVE II
40

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

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

22 [Signature]

23 [Name] [Title]

24 [Date]

25

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

30

31 LETTER FROM CHIEF FINANCIAL OFFICER

32

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

37

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

42 [Fill out the following paragraphs regarding facility(ies)/transportable treatment unit

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (TTU) and liability coverage. If there are no facility(ies)/ TTU(s) that belong in a particular
2 paragraph, write "None" in the space indicated. For each facility/TTU, include the
3 hazardous waste facility/TTU EPA Identification Number, name, and address, and current
4 liability coverage (indicate sudden and nonsudden coverage amounts separately)].

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

10 The firm identified above guarantees, through the guarantee specified in California
11 Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections
12 66264.147 and 66265.147, liability coverage for [insert "sudden" or "nonsudden" or both
13 "sudden and nonsudden"] accidental occurrences at the following facility(ies)/TTU(s)
14 owned or operated by the following:

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

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

30
31 1. The firm identified above is the owner or operator of the following facilities/TTUs for
32 which financial assurance for closure and/or postclosure or liability coverage is
33 demonstrated through the financial test as specified in California Code of Regulations,
34 title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f),
35 section 66264.145, subsection (f), section 66265.143, subsection (e), and section
36 66265.145, subsection (e). The current closure and/or postclosure cost estimates
37 covered by the test are shown for each facility/TTU:

38
39 2. The firm identified above guarantees, through the guarantee as specified in California
40 Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143,
41 subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and
42 section 66265.145, subsection (e), the closure and/or postclosure care or liability

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 coverage of the following facilities/TTUs owned or operated by the guaranteed party. The
2 current cost estimates for the closure or postclosure care so guaranteed are shown for
3 each facility/TTU:

4
5 3. In States where the U.S. Environmental Protection Agency is not administering the
6 financial requirements of subpart H of 40 CFR parts 264 and 265, this firm as owner,
7 operator or guarantor is demonstrating financial assurance for the closure or postclosure
8 care of the following facilities/TTUs through the use of a financial test equivalent or
9 substantially equivalent to the financial test specified in California Code of Regulations, title
10 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section
11 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145,
12 subsection (e). The current closure and/or postclosure cost estimates covered by such a
13 test are shown for each facility/TTU:

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

22
23 5. This firm is using the financial test, or its equivalent, to provide financial assurance or
24 guarantee to the following governmental agencies: [list each agency and the amount
25 assured]

26
27 56. The firm is the owner or operator or guarantor of the following Underground Injection
28 Control facilities for which financial assurance for plugging and abandonment is required
29 under 40 CFR part 144 and is assured through a financial test. The current closure cost
30 estimates as specified in 40 CFR 144.62 are shown for each facility:

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

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

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

39
40 Part A. Liability Coverage for Accidental Occurrences

41
42 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of section 66264.147 or section

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 66265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of section
2 66264.147 or section 66265.147 are used.]

3
4 **ALTERNATIVE I**

5
6 1. Amount of annual aggregate liability coverage to be demonstrated \$ _

7 *2. Current assets \$ _____

8 *3. Current liabilities \$ _____

9 4. Net working capital [line 2 minus line 3] \$ _____

10 *5. Tangible net worth \$ _____

11 *6. If less than 90 percent of assets are located in the United States, give total United
12 States assets \$ _____

13 7. Is line 5 at least \$~~40~~20 million? [Yes/No]

14 8. Is line 4 at least 6 times line 1? [Yes/No]

15 9. Is line 5 at least 6 times line 1? [Yes/No]

16 10. Are at least 90 percent of assets located in the United States? If not, complete
17 line 11. [Yes/No]

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

19 12. Current corporate credit rating of this firm and name of rating service

20 13. Date of corporate credit rating _____

21
22 **ALTERNATIVE II**

23 1. Amount of annual aggregate liability coverage to be demonstrated \$ _

24 2. Current bond rating of most recent issuance and
25 name of rating service \$ _____

26 3. Date of issuance of bond \$ _____

27 4. Date of maturity of bond \$ _____

28 *5. Tangible net worth \$ _____

29 *6. Total assets in the United States [required only if less than 90 percent of assets are
30 located in the United States] \$ _____

31 7. Is line 5 at least \$~~20~~40 million? [Yes/No]

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

33 *9. Are at least 90 percent of assets located in the United States? [Yes/No]

34 10. Is line 9 at least 6 times line 1? [Yes/No]

35
36 [Fill in Part B if you are using the financial test to demonstrate assurance of both liability
37 coverage and closure or postclosure care.]

38
39 **Part B. Closure or Postclosure Care and Liability Coverage**

40
41 [Fill in Alternative I if the criteria of paragraphs (f)(1)(A) of 66264.143 or 66264.145 and/or

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (f)(1)(A) of 66264.147 are used or if the criteria of paragraphs (e)(1)(A) of 66265.143 or
 2 66265.145 and/or (f)(1)(A) of 66265.147 are used. Fill in Alternative II if the criteria of
 3 paragraphs (f)(1)(B) of 66264.143 or 66264.145 and/or (f)(1)(B) of 66264.147 are used or if
 4 the criteria of paragraphs (e)(1)(B) of 66265.143 or 66265.145 and (f)(1)(B) of 66265.147
 5 are used.]
 6

7 **ALTERNATIVE I**
 8

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

37 **ALTERNATIVE II**
 38

- 39 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
 40 shown in the paragraphs of the letter to the Director of the Department of Toxic
 41 Substances Control) \$ _____

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 for each facility/transportable treatment unit (TTU)] for [insert "sudden accidental
2 occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental
3 occurrences"; if coverage is for multiple facilities and the coverage is different for different
4 facilities, indicate which facilities are insured for sudden accidental occurrences, which are
5 insured for nonsudden accidental occurrences, and which are insured for both]. The limits
6 of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate"
7 limits of the Insurer's liability], exclusive of legal defense costs. The coverage provided by
8 the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage
9 mechanism shall also be demonstrated.

10
11 2. The insurance afforded with respect to such occurrences is subject to all of the terms
12 and conditions of the policy; provided, however, that any provisions of the policy
13 inconsistent with subsections (a) through (e) of this Paragraph 1 are hereby amended to
14 conform with subsections (a) through (e). The Insurer certifies the following with respect to
15 the insurance described above:

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

18 (b) The Insurer is liable for the payment of amounts within any deductible applicable to
19 the policy, with a right of reimbursement by the insured for any such payment made by
20 the Insurer. This provision does not apply with respect to that amount of any
21 deductible for which coverage is demonstrated as specified in California Code of
22 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and
23 66265.147.

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

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

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

36
37 3. The Insurer certifies that it is:

38 (a) an admitted carrier, licensed to transact the business of insurance in California; or

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 Insurance, and shall be underwritten by a surplus lines insurer that is on the California
2 Department of Insurance's List of Approved Surplus Line Insurers as being eligible to
3 cover risks in California.
4

5 Attached to and forming part of policy No. [insert policy number] issued by [insert name
6 of Insurer], herein called the Insurer, of [insert address of Insurer] to [insert name of
7 insured] of [insert address of insured] this [insert day] day of [insert month] , [insert year].
8 The effective date of said policy is [insert day] day of [insert month]. California License
9 Number: [insert license number] Admitted [] Excess or Surplus Lines []
10

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

17 [Signature of Authorized Representative of Insurer]
18 [Type name]
19 [Title], Authorized Representative of [name of Insurer]
20 [Address of Representative]
21

22 (j) A certificate of liability insurance as required in section 66264.147 or section 66265.147
23 shall be worded as follows, except that the instructions in brackets are to be replaced with
24 the relevant information and the brackets deleted:
25

26 HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE
27

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 "primary" or "excess"]. If excess coverage, the primary coverage mechanism shall also be
2 demonstrated.

3

4 2. The Insurer further certifies the following with respect to the insurance
5 described above:

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

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

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

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

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

26

27 3. The Insurer certifies that it is:

28 (a) an admitted carrier, licensed to transact the business of insurance in California; or
29 (b) a nonadmitted carrier eligible to provide insurance as an excess or surplus lines
30 insurer in California. Any excess or surplus insurance relied upon by the owner or
31 operator to meet the requirements of this subsection shall be placed by and through an
32 excess or surplus lines broker currently licensed by the California Department of
33 Insurance, and shall be underwritten by a surplus lines insurer that is on the California
34 Department of Insurance's List of Approved Surplus Line Insurers as being eligible to
35 cover risks in California.

36

37 I hereby certify that the wording of this instrument is identical to the wording specified in
38 California Code of Regulations, title 22, section 66264.151, subsection (j), is being
39 executed in accordance with California Code of Regulations, title 22, division 4.5, chapter
40 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance in
41 California, or eligible to provide insurance as an excess or surplus lines insurer ~~in one or~~
42 ~~more states~~ in California. California License Number: [insert license number]

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 Admitted [] Excess or Surplus Lines []

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[Signature of authorized representative of Insurer]
[Type name]
[Title],
Authorized Representative of [name of Insurer]
[Address of Representative]
...

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

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

11
12 *Note: Authority cited: Sections ~~208~~, 25150, ~~and~~ 25159, 25200.21, 58004 and 58012, Health*
13 *and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR*
14 *Section 265.16.*

15
16 ...

17
18 **§ 66265.143. Financial Assurance for Closure.**

19 ...
20 (a) Closure trust fund.

21 ...
22 (b) Surety bond guaranteeing payment into a closure trust fund.

23 ...
24 (c) Closure letter of credit.

25 ...
26 (d) Closure insurance.

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

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

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

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1 ...

2 (e) Financial test and guarantee for closure.

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

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

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

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

- 24 1. a current rating for his or her most recent bond issuance of AAA, AA, A₁
25 or BBB as issued by Standard and Poor's or Aaa, Aa, A₁ or Baa as issued
26 by Moody's; ~~and~~
27 2. tangible net worth at least six times the sum of the current closure and
28 post-closure cost estimates and the current plugging and abandonment
29 cost estimates; ~~and~~
30 3. tangible net worth of at least \$10-20 million; and
31 4. assets located in the United States amounting to at least 90 percent of
32 total assets or at least six times the sum of the current closure and post-
33 closure cost estimates for all of the owner's or operator's hazardous waste
34 facilities regulated by the Department and the current plugging and
35 abandonment cost estimates.

36 (2) The phrase "current closure and post-closure cost estimates" as used in subsection
37 (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 4-4
38 1 through 6 of the letter from the owner's or operator's chief financial officer as specified
39 in section 66264.151, subsection (f). The phrase "current plugging and abandonment
40 cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates
41 required to be shown in paragraphs 4-41 through 6 of the letter from the owner's or
42 operator's chief financial officer.

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

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

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

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

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

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

...

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

(f) Use of multiple financial mechanisms.

...

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

...

(h) Alternative Financial Mechanism for Closure Costs.

...

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

...

Note: Authority cited: Sections 25150, 25159, 25159.5, ~~25200.21,~~ and 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.21, 25245 and 25245.4, Health and Safety Code; 40 CFR Section 265.143.

§ 66265.144. Cost Estimate for Postclosure Care.

(a) ~~The~~ An owner or operator of a hazardous waste disposal unit shall prepare and

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1 submit to the Department a detailed written estimate, in current dollars, of the annual
2 cost of postclosure monitoring and maintenance of the facility in accordance with the
3 applicable postclosure regulations in sections 66265.117 through 66265.120, 66265.228,
4 66265.258, 66265.280, and 66265.310.

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

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

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

27 (c) During the active life of the facility, the owner or operator shall revise the postclosure
28 cost estimate no later than 30 days after a revision to the postclosure plan which increases
29 the cost of postclosure care. If the owner or operator has an approved postclosure plan, the
30 postclosure cost estimate shall be revised no later than 30 days after the Department has
31 approved the request to modify the plan, if the change in the postclosure plan increases the
32 cost of postclosure care. The revised postclosure cost estimate shall be adjusted for inflation
33 as specified in subsection (b) of this section.

34 (d) The owner or operator shall keep the following at the facility during the operating life of
35 the facility: the latest postclosure cost estimate prepared in accordance with subsections (a)
36 and (c) of this section and, when this estimate has been adjusted in accordance with
37 subsection (b) of this section, the latest adjusted postclosure cost estimate.

38
39 *NOTE: Authority cited: Sections ~~208~~, 25150, 25159, 25159.5, 25200.21, and 25245, 58004
40 and 58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40
41 CFR Section 265.144.*

1 **§ 66265.145. Financial Assurance for Postclosure Care.**

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

6 ...

7 (d) Postclosure insurance.

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

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

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

25 ...

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

27 (1) An owner or operator may satisfy the requirements of this section by
28 demonstrating that he or she passes a financial test as specified in this section. To
29 pass this test the owner or operator shall meet the criteria either of subsection
30 (e)(1)(A) or (B) of this section.

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

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

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

38 23. net working capital and tangible net worth each at least six times
39 the sum of the current closure and postclosure cost estimates and the
40 current plugging and abandonment cost estimates; ~~and~~

41 34. tangible net worth of at least \$1020 million; and

42 45. assets in the United States amounting to at least 90 percent of total
43 assets or at least six times the sum of the current closure and

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1 postclosure cost estimates for all of the owner's or operator's hazardous
2 waste facilities regulated by the Department and the current plugging and
3 abandonment cost estimates.

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

- 5 1. a current rating for his or her most recent bond issuance of AAA, AA,
6 A₁ or BBB as issued by Standard and Poor's or Aaa, Aa, A₁ or Baa as
7 issued by Moody's; ~~and~~
- 8 2. tangible net worth at least six times the sum of the current closure and
9 postclosure cost estimates and the current plugging and abandonment
10 cost estimates; ~~and~~
- 11 3. tangible net worth of at least \$~~10~~20 million; and
- 12 4. assets located in the United States amounting to at least 90 percent of
13 total assets or at least six times the sum of the current closure and
14 postclosure cost estimates for all of the owner's or operator's hazardous
15 waste facilities regulated by the Department and the current plugging
16 and abandonment cost estimates.

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

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

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

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

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

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

40 2. ~~in connection with that procedure, no matters came to the independent~~
41 ~~certified public accountant's attention which caused him or her to believe~~
42 ~~that the specified data should be adjusted.~~ identification and description of

1 the specific accounting standards and guidance relied upon to prepare the
2 report.

3 ...

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

8

9 (f) Use of multiple financial mechanisms.

10 ...

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

12 ...

13 (h) Alternative Financial Mechanism for Postclosure Care.

14 ...

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

17 ...

18 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, and 25245, 58004 and*
19 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40*
20 *CFR Section 265.145.*

21

22 **§ 66265.146. Use of a Mechanism for Financial Assurance of Both Closure and Post-**
23 **Closure Care.**

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

31

32 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*
33 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety*
34 *Code; 40 CFR Section 265.146*

35

36 **§ 66265.147. Liability Requirements.**

37 (a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous
38 waste transfer, treatment, storage, or disposal facility or a group of such facilities, shall
39 demonstrate to the Department financial responsibility for bodily injury and property damage
40 to third parties caused by sudden accidental occurrences arising from operations of the
41 facility or group of facilities. Except as specified in Section 67450.16, the owner or operator
42 shall have and maintain liability coverage for sudden accidental occurrences in the amount
43 of at least \$1 million per occurrence with an annual aggregate of at least \$2 million,

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1 exclusive of legal defense costs. This liability coverage may be demonstrated, as specified
2 in subsections (a)(1), (2), (3), (4), (5), (6) or (8) of this section, and for an operator which is a
3 public agency proposing to operate a household hazardous waste collection facility,
4 subsection (7).

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

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

8 1. an admitted carrier, licensed to transact the business of insurance in
9 California; or

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

19 ...

20 (b) Coverage for nonsudden ~~non-sudden~~ accidental occurrences. An owner or operator of
21 a surface impoundment as defined in section 66260.10, landfill as defined in section
22 66260.10, or land treatment facility as defined in section 66260.10 which is used to
23 manage hazardous waste, or a group of such facilities, shall demonstrate to the
24 Department financial responsibility for bodily injury and property damage to third parties
25 caused by nonsudden ~~non-sudden~~ accidental occurrences arising from operations of the
26 facility or group of facilities. The owner or operator shall have and maintain liability
27 coverage for nonsudden ~~non-sudden~~ accidental occurrences in the amount of at least \$3
28 million per occurrence, as defined in section 66260.10 with an annual aggregate of at least
29 \$6 million, exclusive of legal defense costs. An owner or operator who must meet the
30 requirements of this section may combine the required per-occurrence coverage levels for
31 sudden and nonsudden ~~non-sudden~~ accidental occurrences into a single per-occurrence
32 level, and combine the required annual aggregate coverage levels for sudden and
33 nonsudden accidental occurrences into a single annual aggregate level. Owners or
34 operators who combine coverage levels for sudden and nonsudden ~~non-sudden~~ accidental
35 occurrences shall maintain liability coverage in the amount of at least \$4 million per
36 occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated
37 as specified in subsections (b)(1) through (7) of this section.

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

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

41 1. an admitted carrier, licensed to transact the business of insurance in
42 California; or

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

10 ...

11 (c) Request for variance.

12 ...

13 (d) Adjustments by the Department.

14 ...

15 (e) Period of coverage.

16 ...

17 (f) Financial test for liability coverage.

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

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

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

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

- 33 1. a current rating for his or her most recent bond issuance of AAA, AA,
34 A₁ or BBB as issued by Standard and Poor's, or Aaa, Aa, A₁ or Baa as
35 issued by Moody's; ~~and~~
- 36 2. tangible net worth of at least \$~~10~~20 million; ~~and~~
- 37 3. tangible net worth at least six times the amount of liability
38 coverage to be demonstrated by this test; and
- 39 4. assets in the United States amounting to either:
 - 40 a. at least 90 percent of total assets; or
 - 41 b. at least six times the amount of liability coverage to be
 - 42 demonstrated by this test.

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

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

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

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

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

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

33 ...

34 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*
35 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code;*
36 *40 CFR Section 265.147.*

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

2 **Amend** section 66270.14 of Title 22 of the California Code of Regulations, to read:

3

4 **§ 66270.14. Contents of the Part B: General Requirements**

5 (a) ...

6 (b) ...

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

13

14 (23) Community Involvement Profile.

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

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

23 1. the activities to be conducted by the owner or operator that require a
24 hazardous waste facility permit as specified in subsections 66270.13(a)
25 and 66270.13(i);

26 2. the hazardous waste facility site address, or, if a street address is not
27 available, an equivalent description of the facility's location;

28 3. the county assessor's parcel number(s) or a description of the legal
29 boundaries of the facility site as provided in subsection
30 66270.14(b)(18)(G); and

31 4. the surrounding land uses and zoning designations within 2,000 feet of
32 the facility's boundaries as specified in subsection 66270.14(b)(18)(D).

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

38 1. age structure;

39 2. educational attainment;

40 3. household income;

41 4. languages spoken in the home;

42 5. linguistic isolation or ability to speak English;

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- 1 6. population size, and population projections, if available;
2 7. race and ethnicity data; and
3 8. unemployment rate.
4 (C) Surrounding Community Issues. The applicant shall identify known health or
5 environmental concerns relevant to the facility's operation, hazardous waste
6 activities, or facility modifications that have been asserted by the public or
7 government agencies since the last hazardous waste facility permit issuance
8 date.
9 (D) Surrounding Community Interest. The applicant shall summarize or describe
10 any known public activities regarding the hazardous waste facility within the last
11 five (5) years. This may include any public meetings or hearings.
12 (E) Sensitive Receptors. The applicant shall identify sensitive receptors in the
13 surrounding community. These include all schools, child care facilities, hospitals,
14 elderly housing, elder care facilities, or convalescent facilities.
15 (F) Location of Tribal Lands. The applicant shall identify tribal lands in the
16 surrounding community that are owned either by an individual Indian or a tribe,
17 the title to which is held in trust by the federal government or a Native American
18 tribe located in California that is on the contact list maintained by the Native
19 American Heritage Commission for the purposes of Chapter 905 of the Statutes
20 of 2004.
21 (G) Potential Offsite Sources. The applicant shall identify and provide the
22 locations of any potential offsite handlers of hazardous materials or hazardous
23 waste within the surrounding community. These offsite sources must include the
24 identification of the following:
25 1. other hazardous waste facilities;
26 2. large quantity generators of hazardous waste;
27 3. sites identified by the Department pursuant to Health and Safety Code
28 section 65962.5 (Cortese List);
29 4. entities or industrial facilities required to report under the Toxics
30 Release Inventory Program pursuant to Emergency Planning and
31 Community Right-to-Know Act, section 313 (42 U.S.C. §11023 and 40
32 CFR Part 372);
33 5. entities or industrial facilities handling or storing any hazardous
34 materials that are required to report under section 312 of the Emergency
35 Planning and Community Right-to-Know Act (42 U.S.C. §11022 and 40
36 CFR Part 355); and
37 6. transportation corridors in relation to the facility, including freeways,
38 major state vehicle routes, seaports, airports, and railyards.
39
40 ...
41 (c) ...

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

7 ...

8 (e) Hazardous Waste Facility Permit Health Risk Assessment. Except as provided in
9 paragraph (22) of this subsection, an applicant shall prepare and submit a hazardous waste
10 facility permit health risk assessment, subject to Department approval, as follows:

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

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

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

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

22 (D) Potential health impact of the human exposure to persons both within and
23 outside of the facility resulting from releases specified in either subparagraphs
24 (1)(A) or (1)(B) or both of this subsection.

25 (2) The hazardous waste facility permit health risk assessment process may include up
26 to three steps:

27 (A) A hazardous waste facility permit health risk assessment questionnaire
28 ("HRA Questionnaire") completed in accordance with paragraph (e)(4);

29 (B) A screening level health risk assessment for a hazardous waste facility permit
30 ("Screening Level HRA") completed in accordance with paragraphs (e)(10)
31 through (e)(15);

32 (C) A baseline health risk assessment for a hazardous waste facility permit
33 ("Baseline HRA") completed in accordance with paragraphs (e)(16) through
34 (e)(21).

35 (3) The applicant for a hazardous waste facility permit shall submit to the Department an
36 HRA Questionnaire that complies with the requirements of paragraphs (e)(4) through
37 (e)(7) concurrently with the Part B permit application.

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

42 1. Class 1 Landfill;

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

- 10 (A) Information that can be reasonably ascertained by an applicant to assess the
- 11 potential for the public to be exposed to hazardous wastes or hazardous
- 12 constituents from sources related to the facility;
- 13 (B) Inventory of potential facility releases, emissions, and discharges in
- 14 accordance with paragraph (e)(5);
- 15 (C) A completed health risk assessment assumptions checklist in accordance
- 16 with paragraph (e)(6); and
- 17 (D) A conceptual site model of exposures or potential exposures that organizes
- 18 the existing data and documents known site conditions in accordance with
- 19 paragraph (e)(7).

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

- 25 (A) Hazardous Waste Facility Operations Description. A description of hazardous
- 26 waste facility operations must include all of the following:
- 27 1. a summary of past uses of the site;
- 28 2. hazardous waste handling processes;
- 29 3. types of permitted hazardous waste management units;
- 30 4. maximum permit capacity of hazardous waste transfer, treatment,
- 31 storage, and disposal;
- 32 5. types and quantity of hazardous waste transferred, treated, stored or
- 33 disposed onsite;
- 34 6. overall process flow diagrams showing hazardous waste movement or
- 35 flow through the facility;
- 36 7. description of vehicular traffic, including diesel truck traffic under normal
- 37 and maximum permitted operations; and
- 38 8. a listing of other environmental permits as provided in subsection
- 39 66270.13(k) and corresponding expiration dates.

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

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- 1 1. air emission information including air sources listed by individual
- 2 processes or equipment (tanks, valves, scrubbers, etc.), pollutants, daily
- 3 emission limitations stipulated by a Title V operating permit or a local air
- 4 district operating permit, and a summary of the monitoring data for the
- 5 most recent three (3) years;
- 6 2. wastewater discharge information, including discharge points, pollutants
- 7 discharged, daily discharges stipulated in a National Pollutant Discharge
- 8 Elimination System permit or by California waste discharge requirements
- 9 (WDRs), and a summary of the monitoring data for the most recent three
- 10 (3) years;
- 11 3. soil or groundwater contamination plume information at and under the
- 12 facility, including potential sources, chemicals of potential concern, a
- 13 summary of available groundwater monitoring, and a summary of
- 14 available indoor air and soil-gas monitoring data for the most recent three
- 15 (3) years;
- 16 4. list of all known spills documented in accordance with any previous
- 17 authorization of hazardous waste activities or subject to hazardous
- 18 materials reporting requirements under state or federal laws and the
- 19 names of the corresponding reporting agency, if applicable;
- 20 5. assessment of any foreseeable accidents or upset conditions, such as
- 21 fire, floods, earthquakes, or catastrophic releases; and
- 22 6. a summary of any remediation or corrective action performed that
- 23 addresses any of the emissions or releases pursuant to subparagraphs 1.
- 24 through 5. of this subsection.
- 25 (6) The Health Risk Assessment Assumptions Checklist must include:
- 26 (A) Hazard Identification of Chemicals of Potential Concern. This information
- 27 must include the following:
- 28 1. identification of chemicals of potential concern for each environmental
- 29 media; and
- 30 2. chemicals of potential concern's transformation or degradation
- 31 products, if applicable.
- 32 (B) Toxicity Assessment. The toxicity assessment of chemicals of potential
- 33 concern must include a description of the relationship between the
- 34 concentrations of the chemicals of potential concern (dose) and their anticipated
- 35 toxic reaction (response). This information must include the following:
- 36 1. identification of the inherent chemical hazard traits or toxicity
- 37 characteristics of the chemicals of potential concern;
- 38 2. regulatory screening levels for each chemical of potential concern listed
- 39 by environmental media for the protection of human health developed by
- 40 state or federal environmental agencies, if available; and
- 41 3. categories of receptors likely affected or most susceptible to the
- 42 chemicals of potential concern, if applicable.

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- 1 (C) Exposure Assessment. This information must include all of the following:
2 1. chemical transport processes that influence the movement of each
3 chemical of potential concern;
4 2. identification of, and rationale for, exposure scenarios of each of the
5 chemicals of potential concern in environmental media;
6 3. identification of, and rationale for, potential receptors; and
7 4. identification of, and rationale for, potentially complete or complete
8 exposure pathways.

9 (7) Conceptual Site Model.

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

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

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

22 (8) HRA Questionnaire Completeness Determination. Within ninety (90) days of receipt
23 of the HRA Questionnaire, the Department shall evaluate the applicant's HRA
24 Questionnaire for completeness of information required in paragraphs (e)(4) through
25 (e)(7).

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

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

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

- 39 1. require a Screening Level HRA in accordance with the requirements of
40 paragraphs (e)(10) and (e)(13). The Department shall require a Screening
41 Level HRA if any of the following factors is present:
42 a. evidence of limited onsite contamination;

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

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1 posed by conditions and operations at the facility. The work plan and subsequent
2 Screening Level HRA must include all of the following:

3 1. exposure assessment. Exposure must be assessed using the maximum
4 permitted capacity for treatment, storage, transfer, and disposal of
5 hazardous waste requested in the permit application and include all of the
6 following:

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

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

11 c. identification of receptors, routes, and simple exposure
12 pathways; and

13 d. the approach to risk assessment for pathways, routes, and
14 chemicals of potential concern for cancer and non-cancer health
15 impacts;

16 2. the regulatory screening levels listed by environmental media for the
17 protection of human health must be based on peer-reviewed toxicity
18 information and tools developed by the Office of Environmental Health
19 Hazard Assessment and the United States Environmental Protection
20 Agency; and

21 3. an outline of the presentation for the data, analysis, and findings.

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

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

27 1. the applicant shall submit to the Department the supplemental
28 information within thirty (30) days of the receipt of the request for
29 supplemental information; and

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

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

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

41 (13) Screening Level HRA Submittal. The applicant shall submit to the Department the
42 Screening Level HRA that complies with subparagraph (e)(10)(A) and the accepted

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1 Screening Level HRA work plan by the due date specified in the notice in accordance
2 with subparagraph (e)(12)(A).
3 (14) Department Screening Level HRA Determination. Within ninety (90) days of receipt
4 of the Screening Level HRA, the Department shall evaluate the Screening Level HRA
5 for completeness with subparagraph (e)(10)(A) and the accepted Screening Level HRA
6 work plan.

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

9 1. the applicant shall submit to the Department the supplemental
10 information within thirty (30) days of the receipt of the request for
11 supplemental information; and

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

15 (B) The Department shall either:

16 1. accept the Screening Level HRA; or

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

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

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

25 (16) Baseline Health Risk Assessment Work Plan.

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

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

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

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

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

38 5. the approach for the quantification of both exposure and risk
39 characterization;

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

41 7. any additional information specified by the Department.

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

6 (17) Department Baseline HRA Work Plan Determination. Within sixty (60) days of
7 receipt of the Baseline HRA work plan, the Department shall evaluate the work plan for
8 completeness in accordance with paragraph (e)(1) and subparagraph (e)(16)(A).

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

11 1. the applicant shall submit to the Department the supplemental
12 information within thirty (30) days of the receipt of the request for
13 supplemental information; and

14 2. within thirty (30) days of receipt of the supplemental information, the
15 Department shall complete its evaluation of the supplemental information
16 and provide a determination to accept or reject the Baseline HRA work
17 plan.

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

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

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

29 (20) Baseline HRA Department Determination. Within ninety (90) days of receipt of the
30 Baseline HRA, the Department shall evaluate the Baseline HRA for completeness in
31 accordance with paragraph (e)(1), subparagraph (e)(16)(A) and the accepted Baseline
32 HRA work plan.

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

35 1. the applicant shall submit to the Department the supplemental
36 information within sixty (60) days of receipt of the request for supplemental
37 information, unless the Department specifies an alternative due date; and

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

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

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

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

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

14
15 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25200.21, 25245, 58004, and*
16 *58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6, 25200,*
17 *58004 and 58012, Health and Safety Code; and 40 CFR Section 270.14.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9
10 Note: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.
11 Reference: Sections 25110.8.5, 25117.6, 25180(d), 25186, 25186.05, 25186.2, 25186.2.5,
12 25189.3 and 25200.8, Health and Safety Code.

13
14 **§ 66271.51. Determining the Initial Score for Each Class I Violation.**

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

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

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

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

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

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

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

36 (A) The characteristics of the substance involved;

37 (B) The amount of the substance involved;

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

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

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

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

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

3 (A) The management of hazardous waste;

4 (B) The absence of adequate liability coverage or financial assurance for closure,
5 post-closure, or corrective action; or

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

7 (4) Potential harm for violations of financial requirements shall be determined by
8 considering the amount of closure, post-closure, or corrective action costs for which
9 there is no financial assurance or liability coverage, and the likelihood that injury or
10 damages, if they occur, will not be compensated due to inadequacy in financial
11 assurance or liability coverage.

12 (5) Financial requirements violations that consist of documentation errors or omissions
13 that do not affect actual functioning of adequate liability coverage or financial assurance
14 for closure, post-closure, or corrective action may not be classified as posing a major
15 potential harm.

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

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

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

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

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

33 (C) Minimal - The act deviates in a minor way from the requirement. The
34 requirement functions nearly as intended, but not as well as if all provisions had
35 been met.

36 (2) Unless otherwise specified in this article, the extent of deviation of a single
37 requirement may be major, moderate, or minimal depending on the totality of the
38 circumstances.

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

42

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

1
2 Note: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.
3 Reference: Sections 25110.8.5, 25186, 25186.05, 25187 and 25189.2, Health and Safety
4 Code.

5
6 **§ 66271.52. Adjustment to the Initial Score for Repeat Class I Violations.**

7 (a) The Department shall adjust the initial score for each Class I violation to reflect repeat
8 violations.

9 (b) The Department shall make an adjustment for a repeat violation only if the owner or
10 operator has been given at least one Summary of Violations at the same facility within the
11 prior three (3) years or last three (3) inspections, whichever time period is longer, and such
12 Summary of Violations has not been cancelled, retracted, withdrawn, or successfully
13 challenged in an administrative or judicial proceeding. The adjustment for a repeat violation
14 based on issuance of a Summary of Violations shall occur regardless whether the owner or
15 operator corrected a violation after receipt of the Summary of Violations.

16 (c) The Department shall adjust each initial Class I violation score based on the number of
17 repeat violations. The Department shall make the adjustment based on the following matrix:
18
19

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

20
21 NOTE: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.
22 Reference: Sections 25110.8.5, 25186 and 25186.05, Health and Safety Code.
23

24 **§ 66271.53. Provisional and Final Inspection Violation Scores.**

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

1 (b) Issuance of Provisional Inspection Violation Scores.

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

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

13 (c) Dispute of Provisional Inspection Violation Scores.

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

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

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

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

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

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

28 (3) Dispute Document Extension Requests.

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

35 (B) The extension request must include:

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

38 2. The due date for the Dispute Document;

39 3. The amount of additional time requested; and

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

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

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

14 (d) Final Inspection Violation Score.

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

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

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

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

29
30 **§ 66271.54. Facility Violations Scoring Procedure (VSP) Score and Compliance Tiers.**

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

35 (1) For compliance inspections conducted after the effective date of this article, no
36 provisional inspection violation score may be included in the Facility VSP Score unless
37 the provisional inspection violation score was sent to the owner or operator in
38 accordance with section 66271.53(b)(1).

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

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

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

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

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

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

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

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

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

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

38
39 **§ 66271.55. Hazardous Waste Facility Permit Decisions.**

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

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

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

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

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

12 (4) The disclosure statement made pursuant to the requirements of Health and Safety
13 Code sections 25112.5 and 25200.4;

14 (5) The facility's safety record;

15 (6) The facility's compliance with financial assurance or liability coverage requirements
16 for closure, post-closure, or corrective action pursuant to article 8, chapter 14 and article
17 8, chapter 15 of this division, as applicable;

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

20 (8) Any other information allowed by law.

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

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

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

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

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

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

35 **§ 66271.56. Requirements for a Facility Assigned to a "Conditionally Acceptable"**
36 **Compliance Tier.**

37 (a) The owner or operator of a facility that receives a final "conditionally acceptable"
38 compliance tier assignment based on its Facility VSP Score shall comply with the following
39 requirements:

40 (1) Compliance Audits: An owner or operator of a non-federal facility shall prepare and
41 provide to the Department third-party compliance audits in accordance with this section.
42 An owner or operator of a federal facility, however, may prepare and submit to the

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1 Department a facility self-disclosure audit report and use an internal auditor in lieu of a
2 third-party auditor, but is otherwise subject to this section.

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

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

12 a. Have graduated from an accredited college or university and
13 possess a Bachelor of Science degree, in a physical or biological
14 science, engineering, law, or a related field. State certification,
15 licensing or registration, or certification by a nationally recognized
16 professional association in a physical or biological science,
17 engineering or law shall be considered equivalent to such training;
18 and

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

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

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

31 4. If the Department rejects all proposed third-party auditors submitted by
32 the owner or operator to the Department pursuant to subparagraph 1., the
33 Department shall, within thirty (30) days of the Department’s written notice
34 provided pursuant to subparagraph 2., select an auditor qualified to
35 perform the audit and inform the owner or operator of the auditor selected
36 by the Department; and

37 5. If the Department selects an auditor pursuant to subparagraph 4., the
38 owner or operator shall, within thirty (30) days of receipt of the notice
39 provided pursuant to paragraph 4., retain the services of the auditor
40 selected by the Department.

41 (B) Submission of Audits. The owner or operator shall submit to the Department
42 the audit reports prepared by the independent third-party auditor that meet the

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1 requirements of this subparagraph according to the Audit Schedule in section
2 66271.56(a)(1)(C). Audit reports prepared pursuant to this subsection must, at a
3 minimum, include all of the following:

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

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

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

35 (2) Compliance Implementation Plan. The owner or operator shall, within thirty (30) days
36 following the deadline to submit each audit report pursuant to section
37 66271.56(a)(1)(C), submit a corresponding compliance implementation plan as follows:

- 38 (A) The compliance implementation plan must describe all actions needed to
39 correct all deficiencies and address all findings identified in the audit report.
- 40 (B) The compliance implementation plan must identify all permits and permit
41 modifications required by the Department and any other federal, state, or local
42 agency in order to implement the actions described in subparagraph (A).

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

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

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

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

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

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

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

20
21 NOTE: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.
22 Reference: Sections 25110.8.5, 25186 and 25186.05, Health and Safety Code.

23
24 **§ 66271.57. Requirements for a Facility Assigned to an "Unacceptable" Compliance Tier.**

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

27 (1) The Department shall, subject to subsections (b) through (f), initiate a process to
28 deny, suspend, or revoke a permit pursuant to chapter 20 or 21 of this division for a
29 facility after the facility's "unacceptable" compliance tier assignment becomes final in
30 accordance with subsection (b) or subsection (f)(1).

31 (2) Following the initiation of a process pursuant to subsection (a)(1) to deny, suspend,
32 or revoke a permit, the Department may grant a permit or permit modification or
33 otherwise resolve a pending permit action against a facility that has been assigned to an
34 "unacceptable" compliance tier only if the Department makes the written findings
35 required in subsection (g), in addition to any other findings required by law for its
36 decision.

37 (b) An owner or operator of a facility assigned to an "unacceptable" compliance tier may
38 challenge the "unacceptable" compliance tier assignment in accordance with the procedures
39 set forth in this section. If an owner or operator of a facility assigned to an "unacceptable"
40 compliance tier does not challenge the facility's compliance tier assignment in accordance
41 with the procedures set forth in this section, the facility's "unacceptable" compliance tier

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- 1 assignment will become final sixty (60) days after the Department's written notice to the
2 facility of its compliance tier assignment.
- 3 (c) Within sixty (60) days of the Department's written notice that the Department assigned a
4 facility to an "unacceptable" compliance tier based on its Facility VSP Score, the owner or
5 operator may challenge that assignment. If the "unacceptable" compliance tier assignment is
6 based on a provisional inspection violation score disputed by the owner or operator pursuant
7 to section 66271.53(c), then the time frame for the owner or operator to challenge the
8 facility's compliance tier assignment commences when the dispute resolution official issues
9 its written decision pursuant to section 66271.53(c)(4).
- 10 (d) In order to challenge an "unacceptable" compliance tier assignment, an owner or
11 operator must demonstrate, in writing, all of the following:
- 12 (1) The owner or operator is able to operate the facility in compliance with the terms and
13 conditions of its permit, applicable orders, stipulations, agreements, settlement
14 documents, judgments, decrees, grants of authorization, and other documents
15 establishing requirements upon operations at the facility; hazardous waste laws and
16 regulations; and any other applicable environmental laws and regulations;
- 17 (2) The facility, as constructed, can be operated in compliance with the terms and
18 conditions of its permit, applicable orders, stipulations, agreements, settlement
19 documents, judgments, decrees, grants of authorization, and other documents
20 establishing requirements upon operations at the facility; hazardous waste laws and
21 regulations; and any other applicable environmental laws and regulations;
- 22 (3) The owner's or operator's continued operation of the facility is unlikely to adversely
23 affect human health, safety, or the environment;
- 24 (4) The facility's compliance with financial assurance or liability coverage requirements
25 for closure, post-closure, or corrective action, pursuant to article 8, chapter 14 and
26 article 8, chapter 15 of this division, as applicable; and
- 27 (5) At least one audit report required pursuant to this article demonstrates both of the
28 following:
- 29 (A) an ongoing pattern of compliance with applicable hazardous waste
30 management requirements; and
- 31 (B) full implementation of actions to correct deficiencies and address findings of
32 prior audits.
- 33 (e) Within sixty (60) days of receipt of the owner's or operator's written challenge pursuant to
34 this section, the Department shall send out a written notice regarding the time and location
35 of a public meeting regarding the facility's "unacceptable" compliance tier assignment. At the
36 public meeting, the Department will present the grounds for assigning the facility an
37 "unacceptable" compliance tier, the owner or operator may present its opposition, and the
38 public shall have an opportunity to submit comments.
- 39 (f) Within sixty (60) days of the date of the public meeting, the Department shall issue a
40 written decision regarding the owner's or operator's challenge to the facility's "unacceptable"
41 compliance tier assignment. The Department's decision shall be based upon its
42 consideration of the Department's evidence to support the Facility VSP Score and

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1 assignment to the “unacceptable” compliance tier; evidence presented by the owner or
2 operator in its written challenge filed pursuant to subsection (d) and at the public meeting
3 held pursuant to subsection (e); and any other relevant evidence presented at the public
4 meeting held pursuant to subsection (e).

5 (1) If the Department upholds the facility’s “unacceptable” compliance tier assignment,
6 the Department’s written decision will constitute the facility’s final “unacceptable”
7 compliance tier assignment. The Department’s written decision will also notify the owner
8 or operator regarding the Department’s decision to initiate the process to deny,
9 suspend, or revoke the facility’s permit.

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

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

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

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

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

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

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

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

37 (i) The Department shall order a facility that received a final “unacceptable” compliance tier
38 assignment to take any action determined by the Department as necessary to ensure the
39 facility’s compliance with its permit, and any applicable orders, stipulations, agreements,
40 settlements, judgments, decrees, grants of authorization, or other documents establishing
41 requirements upon operations at the facility, as well as hazardous waste laws and

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1 regulations and any other applicable environmental laws and regulations, including, but not
2 limited to:

3 (1) complying with section 66271.56;

4 (2) conducting additional and enhanced training as necessary to improve facility
5 operations and compliance;

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

13 (4) restricting or ceasing the operation of a hazardous waste management unit that is
14 the basis of the facility's violations;

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

19 (6) increasing or expanding facility monitoring, recordkeeping, and/or reporting.
20

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