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To: All Owners and Operators of Hazardous Waste Facilities, Surplus Lines Insurers and Brokers, and Other Interested Parties

SUBJECT: TEMPORARY SUSPENSION OF ENFORCEMENT OF CERTAIN PROVISIONS OF FINANCIAL ASSURANCE REGULATIONS

Summary of Enforcement Suspension

The purpose of this Bulletin is to inform owners and operators of hazardous waste facilities, excess or surplus lines insurers and brokers, other interested parties, and the public that the Department of Toxic Substances Control (DTSC) will temporarily suspend enforcement of certain regulatory provisions relating to the requirement that hazardous facilities maintain financial assurance mechanisms for closure, post-closure, corrective action, and third-party liability. Specifically, DTSC will temporarily suspend enforcing the provision in specified regulations that require excess or surplus lines insurers be listed on the California Department of Insurance's List of Approved Surplus Lines Insurers, commonly referred to as the "LASLI." During the period of time that the enforcement of this requirement is suspended, **DTSC will not require that excess or surplus lines insurers providing closure, post-closure, corrective action, and third-party liability coverage to hazardous waste facilities be on the LASLI.** However, during this temporary suspension of enforcement, excess or surplus lines insurers providing such coverage will remain subject to the requirement they must be eligible to provide insurance as an excess or surplus lines insurer in California. Further, any excess or surplus lines insurance shall be placed by and through an excess or surplus lines broker currently licensed by the California Department of Insurance. All other regulatory provisions under Title 22, Division 4.5 of the California Code of Regulations concerning financial assurance mechanisms REMAIN IN FULL FORCE AND EFFECT.

Background

Health and Safety Code section 25200.21 was enacted into law as part of Senate Bill 673 (Statutes 2015, chapter 611, section 1, effective January 1, 2016.). Section 25200.21 is part of the California Hazardous Waste Control Law (HWCL), Health and Safety Code section 25100 *et seq.*

Section 25200.21 requires that DTSC adopt regulations establishing criteria used for the issuance of a hazardous waste facility permit or a permit modification, which may include criteria for the denial, suspension, or revocation of a permit.

On January 1, 2019, the DTSC regulations authorized by Section 25200.21 became effective. The regulations amended numerous requirements relating to hazardous waste facility permit or permit modification criteria in Title 22, Division 4.5, Chapters 10, 14, 15, 20, and 21 of the California Code of Regulations, including, without limitation, the requirement that owners and operators of such facilities must provide financial assurance coverage for closure, post-closure, corrective action, and third-party liability.

Under the recently-adopted regulations, a hazardous waste facility that elects to use insurance as a financial assurance mechanism to satisfy its closure, post-closure, corrective action, or third-party liability obligations must obtain that insurance coverage from either (1) an admitted carrier, licensed to transact the business of insurance in California, or (2) a nonadmitted carrier eligible to provide excess or surplus lines insurance in California. In the case of a nonadmitted carrier, the regulations require any excess or surplus lines insurance shall be placed by and through an excess or surplus lines broker currently licensed by the California Department of Insurance and underwritten by an excess or surplus lines insurer that is listed on the LASLI as being eligible to cover risks in California.

It has come to DTSC's attention, however, that the provisions in the regulations requiring nonadmitted carriers to be listed on the LASLI may conflict with federal law. DTSC is in the process of evaluating whether such conflict with federal law exists and, if so, whether the regulations should be appropriately revised.

Enforcement Suspension

Therefore, as of the effective date of this Bulletin, DTSC is temporarily suspending enforcement of the requirement that nonadmitted carriers providing closure, post-closure, corrective action, or third-party liability coverage to hazardous waste facilities must be listed on the LASLI.

The following regulations are impacted by this temporary suspension of enforcement: California Code of Regulations, Title 22, sections 66264.143(e)(1)(B); 66264.145(e)(1)(B); 66264.147(a)(1)(A)2.; 66264.147(b)(1)(A)(2); 66265.143(d)(1)(B); 66265.145(d)(1)(B); 66265.147(a)(1)(A)2.; 66265.147(b)(1)2.; and the wording of the instruments under sections 66264.151(e), 66264.151(i), and 66264.151(j) concerning the LASLI list.

While this temporary suspension of enforcement is in effect, **ALL OTHER REGULATORY PROVISIONS UNDER TITLE 22, DIVISION 4.5 OF THE CALIFORNIA CODE OF REGULATIONS CONCERNING FINANCIAL ASSURANCE MECHANISMS REMAIN IN FULL FORCE AND EFFECT, including the requirement that closure, post-closure, corrective action, and third-party liability coverage must be provided by (1) an admitted carrier, licensed to transact the business of insurance in California, or (2) a nonadmitted carrier eligible to provide insurance as an excess or surplus lines insurer in California. In addition, insurance provided by an excess**

or surplus lines insurer must be placed by and through an excess or surplus lines broker currently licensed by the California Department of Insurance.

This temporary suspension of enforcement shall remain in effect unless and until DTSC rescinds or supersedes this Bulletin.

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