

# REGULATORY TEXT

## Generation and Handling Fee Requirements

Department of Toxic Substances Control reference number: R-2024-11E

Office of Administrative Law Notice Reference Number: 2024-0117-02E

### Amend California Code of Regulations, title 22, section 66260.10:

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“Continuous seal” means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

For the purposes of chapter 19, “Contractor” means the entity authorized by a contract between the entity and the governmental agency to address a release of a hazardous substance on behalf of the governmental agency.

“Control chart” means a graphical method for evaluating whether a process is or is not in a state of statistical control.

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“Generator” or “Producer” means any person, by site, whose act or process produces hazardous waste identified or listed in chapter 11 of this division or whose act first causes a hazardous waste to become subject to regulation.

For the purposes of chapter 19, “Generator” has the same meaning as in Health and Safety Code section 25205.1.

“Generator state” means the state where the waste is generated and from which the shipment originates. This definition takes effect on September 5, 2006.

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“Halogenated organic compounds” or “HOCs” means those compounds having a carbon-halogen bond which are listed under Appendix III or Appendix III-A to chapter 18 of this division.

For the purposes of chapter 19 and article 4 of this chapter, “Handler” means any person that generates, transports, offers for transport, treats, stores, or disposes of hazardous waste.

“Handling” means the transporting or transferring from one place to another, or pumping, processing, storing or packaging of hazardous waste, but does not include the handling of any substance before it becomes a waste.

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“Ignitable” means capable of being set afire, or of bursting into flame spontaneously or by interaction with another substance or material.

For the purposes of chapter 19, “Immediate action” means an activity initiated to address the release as soon as reasonably practicable upon the governmental agency’s discovery of the presence of the hazardous substance.

For the purposes of chapter 19, “Imminent” means a chain of events that may result in harm has been set in motion.

“Impoundment” see “Surface impoundment.”

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“Load” means the amount of waste transported by one truck, one railroad car or one barge to a hazardous waste facility.

For the purposes of chapter 19, “Load checking program” means an operation or operating procedure that is used by a person that receives and manages solid waste if all of the following apply:

(1) The operation or operating procedure is used to remove hazardous waste that is discovered and separated from solid waste.

(2) The operation or operating procedure is a requirement of a law, regulation, permit, or other grant of authorization.

“Major facility” means any facility or activity classified as such by the USEPA Regional Administrator in conjunction with the Department.

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For the purposes of chapters 14 and 15, “Repaired” means that equipment is adjusted, or otherwise altered, to eliminate a leak.

For the purposes of chapter 19, “Remedial action” has the same meaning as in Health and Safety Code section 78125.

“Remediation waste” means all solid and hazardous wastes, hazardous substances, and all media (including groundwater, surface water, soils, and sediments) and debris, that are managed for the purpose of implementing corrective action requirements under articles 6, 15.5, or 17 of chapter 14 or article 18 of chapter 15 of this division, Health and Safety Code sections 25200.10 or 25187, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201, or federal RCRA section 3005 [Title 42, U.S.C., section 6925]. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing Health and Safety Code Sections 25200.10 or 25187, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201, or federal RCRA section 3005 [Title 42, U.S.C., section 6925] or 3004(v) [Title 42, U.S.C., section 6924(v)] for releases beyond the facility boundary.

For the purposes of chapter 19, “Removal action” has the same meaning as in Health and Safety Code section 78135.

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“Sudden accidental occurrence” means an unforeseen and unexpected accident which is not continuous or repeated in nature and results in bodily injury, property damage or environmental degradation.

For the purposes of chapter 19, “Substantial” means there is a reasonable cause for concern that the public or the environment would be exposed to a risk of harm.

“Substantial business relationship” means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A

“substantial business relationship” must arise from a pattern of recent or ongoing business transactions, in addition the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Department.

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NOTE: Authority cited: Sections 25141, 25150, 25158.1, 25159, 25159.5, 25200.10, 25204, 25205.5.3, 25205.5.4, 25214.9, 25214.10.2, 25218.3(d), 25200.21, 25245, 25259, 25316, 25355.5, 25356.9, 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, 25174.8.1, 25200.1, 25201.6, 25204, 25214.9, 25218.1(f), 25218.3, 25200.21, 25205.5, 25205.5.3, 25205.16, 25229, 25245, 25259, 25316, 25354(b), 25355.5, 25355.6, 25356.9, 25358.1, 25358.9, 25359.8, 25361,

25501, 25529 and 58012, Health and Safety Code; and 40 CFR Sections 260.10, 261.1, 262.21, 264.551, 264.1031, 268.2, 270.2 and 273.6.

**Add article 4 to California Code of Regulations, title 22, division 4.5, chapter 10:**

Article 4. Hazardous Waste Reporting Requirements

66260.40. Scope

(a) Except as provided for in (b), this article shall apply only to a handler, as defined in section 66260.10, who meets the following criteria:

(1) Had an active Identification Number, issued in California by either the U.S. Environmental Protectional Agency or by the Department, at any time during the prior calendar year; or

(2) Was a handler of hazardous waste in California at any time during the prior calendar year.

(b) This section does not apply to any of the following:

(1) A handler with an Identification Number for a site on tribal land;

(2) An occupant of a household that generates only household hazardous waste, as defined in section 66260.10;

(3) A handler with an Identification Number issued for the purpose of an emergency response for a geographical area identified in a state of emergency proclamation by the Governor pursuant to California Government Code section 8625.

NOTE: Authority cited: Sections 25205.5.3, 25205.5.4, and 58012, Health and Safety Code. Reference: Section 25205.16, Health and Safety Code.

66260.41. Reporting Requirements

(a) Handlers that meet the criteria listed in section 66260.40(a) shall report or verify the following information in the Department's electronic Verification Questionnaire on DTSC's website by March 31 of each year:

(1) Business information:

(A) Name;

(B) Mailing address;

(C) Facsimile number;

(D) Federal Employer Identification Number;

(E) North American Industry Classification System Code;

(F) California Department of Tax and Fee Administration account number;

(G) Operator type;

(H) Business structure;

(I) The number of employees of the firm or organization that worked at least 500 hours or more in California in the prior calendar year, including those that worked at locations that did not generate hazardous waste;

(J) Email address;

(K) Telephone number; and

(L) Any additional business-related information that the Department may deem necessary.

(2) For each Identification Number issued to a handler, verify the corresponding site names and site addresses, and indicate whether the Identification Number is active.

(3) Requirements for Generators. Generators shall report or verify the following information for each site for the prior calendar year, as applicable:

(A) Manifested Waste Verification. Total quantity (in tons) of hazardous waste manifested, including the four largest hazardous waste streams, for each Identification Number.

1. All manifest discrepancies shall be resolved in accordance with section 66264.72 or 66265.72, as applicable.

2. For any converted tonnage that is not accurate, the generator shall report the correct tonnage and provide a justification for the discrepancy.

(B) Unmanifested Hazardous Waste Reporting. Total quantity (in tons) of each of the following unmanifested hazardous wastes:

1. Treated wood waste, as defined in Health and Safety Code section 25230.1(d); and

2. Any waste that has been granted a variance pursuant to Health and Safety Code section 25143 and that is not required to be manifested pursuant to the conditions identified in the variance.

(C) Consolidated Manifesting. The Identification Number of the transporter and total quantity of hazardous waste that was managed using consolidated manifesting procedures, pursuant to Health and Safety Code section 25160.2.

(D) Generation and Handling Fee Exemptions and Deductions. For any waste for which an exemption or deduction is claimed, the waste tonnage associated with each claimed exemption or deduction.

(4) Requirements for Transporters. Transporters shall report or verify the following activities for each site for the prior calendar year, as applicable:

(A) Manifested Waste Verification. Total quantity (in tons) of hazardous waste manifested, including the four largest hazardous waste streams, for each Identification Number.

1. All manifest discrepancies shall be resolved in accordance with section 66264.72 or 66265.72, as applicable.

2. For any converted tonnage that is not accurate, the transporter shall report the correct tonnage and provide a justification for the discrepancy.

(B) Consolidated Manifesting. Manifest tracking number(s), generator Identification Number(s), and total quantity (in tons) of hazardous waste that was managed using consolidated manifesting procedures pursuant to Health and Safety Code section 25160.2.

(C) Transporters that first cause a hazardous waste to be subject to regulation shall also comply with subsection (a)(3) of this section.

(5) Requirements for Treatment, Storage or Disposal Facilities. Facilities that conducted onsite treatment, storage, or disposal shall report or verify the following activities for each facility for the prior calendar year, as applicable:

(A) Manifested Waste Verification. Total quantity (in tons) of hazardous waste manifested, including the four largest hazardous waste streams, for each hazardous waste Identification Number.

1. All manifest discrepancies shall be resolved in accordance with section 66264.72 or 66265.72, as applicable.

2. For any converted tonnage that is not accurate, the owner or operator of the treatment, storage, or disposal facility shall report the correct tonnage and provide a justification for the discrepancy.

(B) Unmanifested Hazardous Waste Reporting. Total quantity (in tons) for each of the following unmanifested hazardous wastes:

1. Treated wood waste, as defined in Health and Safety Code section 25230.1(d); and

2. Any waste that has been granted a variance pursuant to Health and Safety Code section 25143 and that is not required to be manifested pursuant to the conditions identified in the variance.

(C) Generation and Handling Fee Exemptions and Deductions. For any waste for which an exemption or deduction is claimed, the waste tonnage associated with each claimed exemption or deduction.

1. Treatment, Storage, or Disposal Facilities that first cause a hazardous waste to be subject to regulation shall also comply with subsection (a)(3) of this section.

(b) The handler reporting pursuant to subsection (a) of this section shall certify, to the best of its knowledge, that the information provided pursuant to this section is true and correct under the penalty of perjury.

(c) Any handler that fails to comply with this section or fails to provide information required by the Department to verify the accuracy of hazardous waste activity data by the reporting deadline, shall be subject to suspension of any and all Identification Numbers assigned to the handler, penalties pursuant to article 3 of chapter 19 of this division, and an administrative enforcement order issued pursuant to Health and Safety Code section 25187.

(d) The information reported by a handler pursuant to subsection (a) of this section is subject to review by the department at its sole discretion.

NOTE. Authority cited: Sections 25205.5.3, 25205.5.4, and 58012, Health and Safety Code. Reference: Section 25205.16, Health and Safety Code.

## **Add article 1 to California Code of Regulations, title 22, division 4.5, chapter 19:**

### Article 1. Generation and Handling Fee Exemption Requirements

#### 66269.10. Purpose and Scope

This article applies to all generators of hazardous waste pursuant to Chapter 6.5 of the Health and Safety Code. This article applies to the generation and handling fee imposed pursuant to Health and Safety Code section 25205.5(a) for hazardous waste generated on or after January 1, 2023.

NOTE: Authority cited: Sections 25205.5.3, 25205.5.4, and 58012, Health and Safety Code. Reference: Sections 25174.8.1, 25205.5, and 25205.5.3, Health and Safety Code.

#### 66269.11. Applicability

##### (a) Applicability to generators of hazardous waste.

(1) The generator for the purposes of the generation and handling fee assessed pursuant to Health and Safety Code section 25205.5 includes, but is not limited to:

(A) A generator that is liable for the fee, but did not pay the fee.

(B) A generator of any quantity of hazardous waste.

NOTE: Authority cited: Sections 25205.5.3, 25205.5.4, and 58012, Health and Safety Code. Reference: Sections 25174.8.1, 25205.5, and 25205.5.3, Health and Safety Code.

#### 66269.12. Exemption Requirements

(a) The exemption requirements in this section are in addition to, and do not alter, the exemption requirements in Health and Safety Code sections 25174.8.1 and 25207.12, and the deduction requirements in section 25205.5.

(b) Governmental Response Exemption: Hazardous waste generated when a governmental agency takes a removal, remedial, or corrective action to address a release of a hazardous substance is exempt from the generation and handling fee pursuant to Health and Safety Code section 25174.8.1(a)(1) if all of the following conditions are met:

(1) The threat posed by the release was both imminent and substantial.

(2) The governmental agency took necessary immediate action.

(3) The governmental agency did not cause the release of the hazardous substance.

(4) The governmental agency is not a responsible party for the release as described in Health and Safety Code section 78145 nor a person subject to an order relating to the release as described in Health and Safety Code section 25187(b)(5).

(A) For the purposes of subsection (b)(4) of this section, the governmental agency may assert the exclusions and defenses outlined in Health and Safety Code section 78145.

(5) The governmental agency files an annual return with the California Department of Tax and Fee Administration pursuant to Revenue and Taxation Code section 43152.7(b).

(c) Household Hazardous Waste Exemption: The fee exemption in Health and Safety Code section 25174.8.1(a)(2) applies only to the hazardous waste that a household hazardous waste facility collects from the public in compliance with the requirements in Article 10.8 of the Health and Safety Code.

(d) Load Checking Program Exemption: The fee exemption in Health and Safety Code section 25174.8.1(a)(3) applies only to load checking programs as defined in 66260.10. At the time the hazardous waste was received by the person operating the load checking program, the person operating the load checking program must have implemented operational procedures to minimize the amount of hazardous waste received.

(e) Pass Through Waste Deduction: The fee deduction in Health and Safety Code section 25205.5(a)(4) applies only to waste that is stored, bulked, and transferred by a permitted hazardous waste facility in accordance with the permit.

(1) The deduction applies only to waste that was generated offsite, even if the quantity of waste was below the minimum threshold for assessment of the generation and handling fee on the original generator pursuant to Health and Safety Code section 25205.5.

(2) The deduction is not applicable to hazardous waste that undergoes treatment, as defined in Health and Safety Code section 25123.5, at the permitted hazardous waste facility claiming the deduction.

(f) Exempted Banned, Unregistered, or Outdated Agricultural Waste: For the purposes of the generation and handling fee, a county operating a collection program pursuant to division 20, chapter 6.5, article 9.4 of the Health and Safety Code is not the generator of the hazardous waste collected as part of that program as specified in section 66269.11.

(g) Disaster Victims Exemption:

(1) Victims of disasters shall be exempt from the generation and handling fee imposed pursuant to Health and Safety Code section 25205.5 if all of the following apply:

(A) The hazardous waste is generated in a geographical area identified in a state of emergency proclamation by the Governor pursuant to Government Code section 8625 because of fire, flood, storm, earthquake, riot, or civil unrest.

(B) The hazardous waste is generated when property owned or controlled by the victim is damaged or destroyed as a result of the disaster.

(C)(i) The hazardous waste is not hazardous waste that is routinely produced as part of a manufacturing or commercial business or that is managed by a hazardous waste facility or a facility operated by a generator of hazardous waste that files a hazardous waste notification statement with the Department pursuant to Health and Safety Code section 25158(a).

(ii) For purposes of this paragraph "routinely produced" means a waste type that is regularly generated in the normal course of that business' operations. However, if a regularly generated waste type is generated as a direct result of the disaster and not in the normal course of business then that waste is eligible for this exemption.

(D) The hazardous waste is disposed of within 365 days from the date of the termination of an emergency proclamation issued by the Governor for the disaster which occurred in that geographical area.

(2) A person claiming an exemption from the generation and handling fee shall exclude hazardous waste meeting the requirements specified in subsection (g)(1) from the calculation of the generation and handling fee due pursuant to Health and Safety Code section 25205.5. A person that has paid a generation and

handling fee to the state for hazardous waste meeting the requirements specified in subsection (g)(1) may claim a refund in accordance with Chapter 5 (commencing with Section 43451) of Part 22 of Division 2 of the Revenue and Taxation Code.

NOTE: Authority cited: Sections 25205.5.1, 25205.5.3, 25205.5.4, and 58012, Health and Safety Code. Reference: Sections 25174.8.1, 25205.5, 25205.5.1, 25205.5.3, and 25207.12, Health and Safety Code.

## **Add article 2 to California Code of Regulations, title 22, division 4.5, chapter 19:**

### Article 2. Generation and Handling Fee Exemption Review Process and Recordkeeping Requirements

#### 66269.20. Applicability

This article applies to all generators that claim any exemption or deduction from the generation and handling fee assessed pursuant to Health and Safety Code section 25205.5 in a report to the Department pursuant to section 66260.41, or in a return filed to the California Department of Tax and Fee Administration pursuant to Revenue and Taxation Code section 43152.7.

NOTE: Authority cited: Sections 25205.5.3, 25205.5.4, and 58012, Health and Safety Code. Reference: Sections 25174.8.1, 25205.5, 25205.5.3, and 25205.16 Health and Safety Code.

#### 66269.21. Generation and Handling Fee Exemption Review

(a) Any claim of an exemption or deduction from the generation and handling fee assessed pursuant to Health and Safety Code section 25205.5 is subject to review by the Department at its sole discretion. The Department shall provide written notification to the generator notifying the generator of selection for exemption review and identifying the information that the generator is required to submit to the Department pursuant to section 66269.22.

(b) The Department shall provide written notification of selection pursuant to subsection (a) of this section to a generator within three years after the date when the return was due pursuant to Revenue and Taxation Code section 43152.7. However, if a generator willfully or knowingly made a false statement, withheld material facts, or failed to complete a report or file a return as described in section 66269.20, the written notification shall be provided to a generator within eight years after the date when the return was due pursuant to Revenue and Taxation Code section 43152.7.

(c) The generator shall provide information required in section 66269.22 within 30 calendar days of receipt of the Department's written notification. The deadline to provide information will be extended by 15 calendar days, but only if DTSC receives an extension request from the generator in writing before the end of the 30 calendar day deadline.

(d) If the Department finds that the information submitted by a generator pursuant to subsection (c) is incomplete or inadequate, the Department may provide the generator a written notification requesting additional information. The generator shall provide the additional information within 30 calendar days of receipt of the notification.

(e) If a generator does not provide the information required pursuant to section 66269.22 within the time required by subsections (c) and (d), the Department may issue a final evaluation finding that the requirements of the exemption are not met due to insufficient information. However, a generator that willfully or knowingly made a false statement or withheld material facts to the Department pursuant to this section shall be liable for penalties pursuant to article 3 of this chapter, and the Department may issue a final evaluation finding that the requirements of the exemption are not met due to insufficient information.

(f) The Department shall provide a written final evaluation to the generator and the California Department of Tax and Fee Administration. The final evaluation shall serve as the conclusion of the Department's exemption review pursuant to this section. The California Department of Tax and Fee Administration may consider the Department's evaluation in accordance with Part 22 of Division 2 of the Revenue and Taxation Code.

NOTE: Authority cited: Sections 25205.5.3, 25205.5.4, and 58012, Health and Safety Code. Reference: Sections 25174.8.1, 25196.1, 25205.5, 25205.5.3, and 25205.16, Health and Safety Code.

66269.22. Recordkeeping Requirements for Generators Claiming an Exemption from the Generation and Handling Fee

(a) A generator described in section 66269.20 shall retain the information specified by this section for the hazardous waste for each exemption or deduction claim, beginning when the hazardous waste is generated until at least three years after the date when the return was due pursuant to Revenue and Taxation Code section 43152.7.

(1) The time period set forth in subsection (a) shall toll automatically upon the issuance of the Department's notification issued under section 66269.21(b) or during the course of any unresolved enforcement action regarding the generator.

(b) For any exemption or deduction from the generation and handling fee, generators shall retain, and provide upon the Department's request, the following information:

(1) Facts about the source of the waste and the generation of the waste that are relevant to the claim;

(2) All documents required pursuant to section 66262.40(c);

(3) All shipping documents with details of the management of the hazardous waste including, but not limited to, manifest numbers, bills of lading, logs, invoices, and movement documents associated with the waste, as applicable;

(4) Explanation of the information provided and how it demonstrates the accuracy of the exemption claimed, including, but not limited to:

(A) Identification of the statute or regulation applicable to the claim;

(B) Facts meeting the requirements under the applicable statute or regulation.

(5) Any other documentation that supports the claim of the exemption.

(c) A generator claiming an exemption under Health and Safety Code section 25174.8.1(a)(1) and section 66269.12(b) shall retain all information required under subsection (b) and all of the following:

(1) Documents demonstrating that the release was not caused by the governmental agency or its contractor;

(2) Documents demonstrating the necessity of immediate action;

(3) Documents demonstrating that the governmental agency took action to address the release as soon as reasonably practicable upon the governmental agency's discovery of the hazardous substance;

(4) If the governmental agency is the owner or operator of the site where the release occurred, documentation that the governmental agency qualifies for an exemption or a defense under Health and Safety Code Section 78145;

(5) Any other documentation that supports the claim of the exemption.

(d) A generator claiming an exemption under Health and Safety Code section 25174.8.1(a)(2) and section 66269.12(c) shall retain all information required under subsection (b) and all of the following:

(1) Documentation of total tonnage manifested offsite in the calendar year the waste being exempted was generated;

(2) "Form 303 Household Hazardous Waste Collection Report" required pursuant to California Code of Regulations, title 14, section 18751.2.2, for the calendar year in which the waste being claimed as exempt was generated;

(3) Any other documentation that supports the claim of the exemption.

(e) A generator claiming an exemption under Health and Safety Code 25174.8.1(a)(3) and section 66269.12(d) shall retain all information required under subsection (b) and all of the following:



(1) Documents with information that the waste was generated as part of a load checking program, including, but not limited to, logs, inventory, and the written operating procedures for the program existing at the time the waste was generated;

(2) Documents with information that the load checking program is required in order for the facility to comply with a law, regulation, permit, or other grant of authorization, including, but not limited to, relevant page numbers in a permit;

(3) Any other documentation that supports the claim of the exemption.

(f) A generator claiming an exemption under Health and Safety Code section 25174.8.1(a)(4) shall retain all information required under subsection (b) and all of the following:

(1) Documents with the following information:

(A) The amount of “household do-it-yourselfer used oil” that was collected during the calendar year, as required by Health and Safety Code section 25174.8.1(a)(4)(B);

(B) Authorization pursuant to Public Resources Code section 48660 as a certified used oil collection center at the time the “household do-it-yourselfer used oil” was collected.

(2) Any other documentation that supports the claim of the exemption.

(g) A generator claiming an exemption under Health and Safety Code section 25174.8.1(a)(5) shall retain all information required under subsection (b) and all of the following:

(1) Documentation that demonstrates the hazardous waste was recycled and used onsite such as operating records or, for waste that meets the requirements in Health and Safety Code section 25143.2(c), a recyclable materials report pursuant to Health and Safety Code section 25143.10;

(2) Any other documentation that supports the claim of the exemption.

(h) A generator claiming an exemption under Health and Safety Code section 25174.8.1(a)(6) shall retain all information required under section (b) and all of the following:

(1) Documentation of the facility permit to treat the hazardous waste;

(2) Documentation demonstrating the resultant waste from the treatment was nonhazardous;

(3) Any other documentation that supports the claim of the exemption.

(i) A generator claiming an exemption under Health and Safety Code section 25174.8.1(a)(7) shall retain all information required under subsection (b) and all of the following:

(1) Documents showing the total quantity of universal waste generated in the calendar year;

(2) Documentation of any transport of the universal waste identified in paragraph (1), including, but not limited to, the destination facility as defined under section 66260.10, name of the transporter, and date of transport;

(3) Documentation that the management of the universal waste was in compliance with universal waste management standards in chapter 23 of this division;

(4) Any other documentation that supports the claim of the exemption.

(j) A generator claiming an exemption under Health and Safety Code section 25207.12 and section 66269.12(f) shall retain all information required under subsection (b) and all of the following:

(1) Documentation demonstrating that the generator meets the definition of “eligible participant” pursuant to Health and Safety Code section 25207.1(c);

(2) Documentation demonstrating that the waste being exempted meets the definition of a “Banned or unregistered agricultural waste” or “Outdated agricultural waste” pursuant to the Health and Safety Code section 25207.1(a) and (d);

(3) Any other documentation that supports the claim of the exemption.

(k) A generator claiming an exemption under Health and Safety Code section 25144.6(b) shall retain all information required under subsection (b) and any other documentation that supports the claim of the exemption.

(l) A generator claiming an exemption under Health and Safety Code 25205.5.1 and section 66269.12(g) shall retain all information required under subsection (b) and all of the following:

(1) Documentation demonstrating all conditions of section 66269.12(g)(1) have been met;

(2) Any other documentation that supports the claim of the exemption.

(m) A generator claiming a deduction under Health and Safety Code 25205.5(a)(4) and section 66269.12(e) shall retain all information required under subsection (b) and all of the following:

(1) Documentation of the facility permit to conduct the activities listed in Health and Safety Code section 25205.5(a)(4);

(2) Documentation demonstrating payment of the annual facility fee for the calendar year the waste being stored, bulked, and transferred was generated;

(3) Documentation demonstrating the facility the waste was en route to was authorized to conduct the activities listed in Health and Safety Code section 25205.5(a)(4)(A) through (D), inclusive;

(4) Any other documentation that supports the claim of the deduction.

(n) Upon receipt of the documentation pursuant to this section, the Department may, at its discretion, request additional information to evaluate the claimed exemption or deduction.

NOTE: Authority cited: Sections 25205.5.1, 25205.5.3, 25205.5.4, and 58012, Health and Safety Code. Reference: Sections 25144.6, 25174.8.1, 25196.1, 25205.5, 25205.5.1, 25205.5.3, and 25207.12, Health and Safety Code.

## **Add article 3 to California Code of Regulations, title 22, division 4.5, chapter 19:**

### Article 3. Assessment of Penalties

#### 66269.30. Applicability

(a) This article applies to the assessment of penalties pursuant to Health and Safety Code section 25189.2 and 25196.1. Further, it applies to the assessment of administrative penalties in administrative enforcement orders issued pursuant to Health and Safety Code section 25187.

(b) Administrative penalties assessed in administrative enforcement orders issued pursuant to Health and Safety Code sections 25187 shall be assessed following the procedures set forth in this article.

(c) The Department shall, pursuant to Health and Safety Code section 25180(d), determine whether the person being assessed a penalty is being treated equally and consistently with regard to the same types of violations previously assessed against other violators.

NOTE: Authority cited: Sections 25180, 25205.5.4 and 58012, Health and Safety Code. Reference: Sections 25187, 25187 (d) and (e), 25189.2, and 25196.1, Health and Safety Code.

#### 66269.32. Determining the Initial Penalty for Each Reporting System Violation

(a) For the purposes of this article, "Reporting systems" refers to the systems that are used to fulfill a handler's reporting requirements pursuant to section 66260.40, Health and Safety Code section 25160.2(d), and Health and Safety Code section 25230.8(c), as applicable.

(b) The Department shall determine an initial penalty for each violation in a reporting system as identified in this section. A handler shall be subject to a violation for each Identification Number issued to the handler per reporting period that is out of compliance with the reporting system requirements. The Department shall use the matrices set forth in this section to determine the initial penalty for each reporting system violation.

(c) Violations for Delinquency in Reporting

(1) Failure to report by the reporting system deadline is a violation. A handler shall be assessed a separate violation for each Identification Number that does not comply with this requirement.

(2) The matrix set forth below shall be used to determine the initial penalty based upon the annual tonnage generated in the prior calendar year, beginning with 2024, and the days out of compliance.

<b><u>Delinquency in Reporting</u></b>					
<b><u>Tonnage Tier</u></b>	<b><u>1-15 days after reporting deadline</u></b>	<b><u>16-30 days after reporting deadline</u></b>	<b><u>31-45 days after reporting deadline</u></b>	<b><u>46-60 days after reporting deadline</u></b>	<b><u>61+ days after reporting deadline</u></b>
<u>less than 5 tons</u>	<u>\$25</u>	<u>\$50</u>	<u>\$75</u>	<u>\$125</u>	<u>\$250</u>
<u>5 tons but less than 10 tons</u>	<u>\$100</u>	<u>\$200</u>	<u>\$350</u>	<u>\$550</u>	<u>\$1,100</u>
<u>10 tons but less than 25 tons</u>	<u>\$200</u>	<u>\$300</u>	<u>\$450</u>	<u>\$650</u>	<u>\$1,300</u>
<u>25 tons but less than 500 tons</u>	<u>\$300</u>	<u>\$400</u>	<u>\$550</u>	<u>\$750</u>	<u>\$1,500</u>
<u>500 tons but less than 1,000 tons</u>	<u>\$400</u>	<u>\$500</u>	<u>\$650</u>	<u>\$850</u>	<u>\$1,700</u>
<u>1,000 or more tons</u>	<u>\$500</u>	<u>\$600</u>	<u>\$750</u>	<u>\$950</u>	<u>\$1,900</u>

(d) Violations for Inaccurate Reporting

(1) Reporting systems. A handler that reports tonnage with a discrepancy of 15% or greater between the tonnage reported into a reporting system and the actual tonnage generated shall be assessed a violation.

(2) Fee return. A handler that reports a discrepancy of 15% or greater between the tonnage in the report submitted to the Department pursuant to section 66260.41 and the return filed with the California Department of Tax and Fee Administration shall be assessed a violation. A handler shall be assessed a separate violation for each Identification Number that does not comply with this requirement.

(3) The matrix set forth below shall be used to determine the initial penalty for each inaccurate reporting violation based upon the annual tonnage generated in the prior calendar year, beginning with 2024.

<b><u>Initial Penalties for Inaccurate Reporting</u></b>	
<b><u>Tonnage Tier</u></b>	<b><u>Violation</u></b>
<u>less than 5 tons</u>	<u>\$750</u>
<u>5 tons but less than 10 tons</u>	<u>\$1,500</u>
<u>10 tons but less than 25 tons</u>	<u>\$2,500</u>
<u>25 tons but less than 500 tons</u>	<u>\$3,000</u>
<u>500 tons but less than 1,000 tons</u>	<u>\$5,000</u>
<u>1,000 or more tons</u>	<u>\$7,500</u>

(e) Violations for Willfully or Knowingly Making A False Statement or Withholding Material Facts. The Department shall assess an initial penalty of \$70,000 for any handler that has willfully or knowingly made a false statement in, or withheld material facts from, information submitted to any of the reporting systems.

NOTE: Authority cited: Sections 25205.5.4 and 58012, Health and Safety Code. Reference: Sections 25187, 25189.2, and 25196.1, Health and Safety Code.

#### 66269.33. Determining the Initial Penalty for Each Exemption Review Violation

The Department shall assess an initial penalty of \$70,000 for a generator that has willfully or knowingly made a false statement or withheld material facts in the information submitted to the Department pursuant to sections 66269.21 or 66269.22.

NOTE: Authority cited: Sections 25205.5.3, 25205.5.4 and 58012, Health and Safety Code. Reference: Sections 25187, 25189.2, 25196.1, and 25205.5.3, Health and Safety Code.

#### 66269.34. Adjustment Factors

(a) The initial penalty assessed shall double for each violation as set forth in section 66296.32(c)(1) per Identification Number per reporting system based on the handler's tonnage tier in the most recent reporting period for which the handler is delinquent upon meeting all of the following conditions:

- (1) The delinquency in reporting is greater than 60 days;
- (2) The delinquency occurred in two or more consecutive reporting periods; and
- (3) The delinquency occurred in the same reporting system.

(b) The initial penalty assessed for inaccurate reporting shall double for each Identification Number per reporting system based on the handler's tonnage tier in the most recent reporting period for which the handler is in violation upon meeting both of the following conditions:

- (1) The violation occurred in two or more consecutive reporting periods; and
- (2) The violation occurred in the same reporting system.

(c) After determining the initial penalty, the Department shall adjust the initial penalty based on the violator's intent in committing the violation using the following adjustment factors for violator's intent:

<u>Adjustment Factor</u>	<u>Circumstance</u>
<u>Downward Adjustment of 100 percent</u>	<u>Violation was completely beyond the control of the violator.</u>
<u>Downward Adjustment of 0 to 50 percent</u>	<u>The extent to which the violation occurred despite good faith efforts to comply with regulation(s).</u>

(d) Prophylactic Effect: The initial penalty may be adjusted upward or downward to ensure that the penalty is sufficient to provide a prophylactic effect on both the violator and the regulated community as a whole.

(e) Ability to Pay: Violators must provide financial information including, but not limited to, the violator's state and federal tax returns for the last three years, including all schedules, exhibits, and attachments; financial statements for three years; current financial statement; and the most recent 12 months of bank statements for all checking, savings, lines of credit, and investment accounts, to the Department to request extension or reduction of assessed penalties. After the violator has provided the Department with the financial information necessary to assess the violator's ability to pay, and upon the Department's determination that full payment in lump sum would cause extreme financial hardship to the violator, the Department shall extend payment of the penalty over a period of time. If the Department determines extending the penalty payment over a period of time would cause extreme financial hardship to the violator, the Department shall reduce the penalty. To evaluate whether payment will cause extreme financial hardship to the violator, the Department shall use the "Individual Ability to Pay Plus (INDIPAY+) Guide," May 2021, and the "Overview of Ability to Pay Guidance and Models," May 1995, hereby incorporated by reference.

(f) Adjustment of the initial penalty in accordance with the subsections (c) through (e), inclusive, may result in an adjusted initial penalty that is higher or lower than presented in the originally selected matrix cell, but shall not exceed the statutory maximum.

NOTE: Authority cited: Sections 25205.5.4 and 58012, Health and Safety Code. Reference: Sections 25187, 25189.2, and 25196.1, Health and Safety Code.

#### 66269.35. Final Penalty

The final penalty for each violation consists of the initial penalty, as defined in section 66269.32 and section 66269.33, with any adjustments made pursuant to the adjustment factors set forth in Sections 66269.34. The final penalty for each violation shall not exceed the statutory maximum.

NOTE: Authority cited: Sections 25205.5.4 and 58012, Health and Safety Code. Reference: Sections 25187, 25189.2, and 25196.1, Health and Safety Code.

### **Amend and renumber California Code of Regulations, title 22, division 4.5, chapter 19:**

#### Article 4. Fee Rates

~~66269.1.~~ 66269.40. Environmental Fee.

*[no changes to the text]*

NOTE: Authority cited: Sections 25205.6 and 58012, Health and Safety Code. Reference: Sections 25205.6, 25205.6.1 and 25501, Health and Safety Code.

~~66269.3.~~ 66269.41. Facility Fee Rates for Fiscal Year 2024–25.

*[no changes to the text]*

NOTE: Authority cited: Sections 25125.2, 25125.4 and 25205.2.1, Health and Safety Code. Reference: Section 25205.2, Health and Safety Code.

~~66269.4.~~ 66269.42. Generation & Handling Fee Rate for Fiscal Year 2024-25.

*[no changes to the text]*

NOTE: Authority cited: Sections 25125.2, 25125.4 and 25205.5.01, Health and Safety Code. Reference: Section 25205.5, Health and Safety Code.

~~66269.5.~~ 66269.43. Environmental Fee Rates for Fiscal Year 2024–25.

*[no changes to the text]*

NOTE: Authority cited: Sections 25125.2, 25125.4 and 25205.6.1, Health and Safety Code. Reference: Section 25205.6, Health and Safety Code.

~~66269.6.~~ 66269.44. Facility Fee Rate Limits.

(a) The fee rates established by the Board of Environmental Safety pursuant to subdivision (a) of Section ~~25204.2.4~~ 25205.2.1 of the Health and Safety Code shall not exceed the following limits:

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NOTE: Authority cited: Sections 25125.2, 25125.4 and 25205.2.1, Health and Safety Code. Reference: Section 25205.2.1, Health and Safety Code.

~~66269.7.~~ 66269.45. Generation and Handling Fee Rate Limit.

*[no changes to the text]*

NOTE: Authority cited: Sections 25125.2, 25125.4 and 25205.5.01, Health and Safety Code. Reference: Section 25205.5.01, Health and Safety Code.

~~66269.8.~~ 66269.46. Environmental Fee Rate Limits.

*[no changes to the text]*

NOTE: Authority cited: Sections 25125.2, 25125.4 and 25205.6.1, Health and Safety Code. Reference: Section 25205.6.1, Health and Safety Code.

~~66269.2.~~ 66269.47. Disaster Victims Hazardous Waste Fee Exemption.

*[no changes to the text]*

NOTE: Authority cited: Sections 25150, 25205.5.1 and 58012, Health and Safety Code; Reference: Sections 25158, 25174.1, 25174.2, 25174.6, 25174.7, 25205.3, 25205.5 and 25205.9, Health and Safety Code. Sections 8625, 8626, 8627, 8628 and 8629, Government Code.