

**INITIAL STATEMENT OF REASONS
RECYCLABLE HAZARDOUS WASTE REGULATIONS
Department Reference Number R-99-15**

PROBLEM, REQUIREMENT, OR OTHER CONDITION ADDRESSED

This rulemaking affects California Code of Regulations, title 22, sections 66266.1 and 66266.2.

In 1999, the legislature enacted a new law, Statutes 1999, chapter 745, section 25175 (SB 606) with the intent of increasing the volume of hazardous waste recycled each year. SB 606 amended Health and Safety Code section 25175 to require the Department of Toxic Substances Control (DTSC) to prepare, adopt, and to revise, when appropriate by regulation, a list of specified hazardous wastes that DTSC finds are economically and technologically feasible to recycle. To encourage generators to recycle the specified hazardous wastes, the statute authorizes DTSC, after making specified findings and providing notice, to charge generators who dispose of one (1) or more of the specified hazardous wastes a disincentive fee equal to five (5) times the disposal fee that would otherwise apply. As mandated, DTSC proposes this regulation package for adoption, which includes the revised List of Recyclable Hazardous Wastes and the requirements for the generator's justification statement for disposal of recyclable hazardous wastes.

In 1997, the Bureau of State Audits issued an audit report entitled "Department of Toxic Substances Control: The Generator Fee Structure Is Unfair, Recycling Efforts Need Improvement, and State and Local Agencies Need to Improve Their Administration of the Unified Program." The Bureau of State Audits recommended that DTSC improve its responsibilities to foster the recycling of hazardous waste. Two years later, in response to the audit report, the legislature enacted SB 606, amending Health and Safety Code section 25175. Pursuant to SB 606, DTSC must prepare a list of specified recyclable hazardous wastes that is clear, concise, and enforceable in order to implement the statute.

DTSC is revising the current list to comply with the statutory mandate, and to update and clarify the existing regulations. The existing List of Recyclable Hazardous Waste Types (California Code of Regulations, tit. 22, section 66266.2) is 22 years old. Since the list was adopted, California's hazardous waste industry, and the laws and regulations governing it have changed substantially. However, section 66266.2 has not been updated to reflect the changes. The current List of Recyclable Hazardous Waste Types does not list specific hazardous wastes, but instead describes seven (7) hazardous waste "types" that were commonly delivered to landfills and believed to be recyclable, in 1980, by the Department of Health Services (DHS), DTSC's predecessor. Several categories or waste

"types" currently listed include materials that are no longer identified as hazardous wastes or that are not regulated by DTSC. A list of broad waste types does not satisfy the most recent statutory requirement to create a list of specific hazardous wastes. In addition, for each of the broad waste types presently listed, one can find examples of hazardous wastes that are not presently feasible to recycle. Consequently, the current regulations need to be clarified and updated.

The proposed regulations add lead-acid batteries, used antifreeze (ethylene glycol and propylene glycol) and used oil to the List of Recyclable Hazardous Wastes. The revised list will be consistent with current statutes and regulations. The proposed regulations also amend the process for implementation of the recycling requirements for the wastes listed in California Code of Regulations, title 22, section 66266.2. The amendments include a description of the content of the statement from a generator justifying its disposal of a recyclable hazardous waste, and the process for making findings, providing notice and imposing increased disposal fees if the generator disposes its recyclable hazardous waste.

As part of its justification for disposing of its recyclable hazardous waste, the generator may include information based on a diligent investigation or environmental audit. An environmental audit is defined in California Code of Regulations, title 4, section 8050, as "an investigation into the applicant's (the recycling facility) production operations and its compliance with federal, state, and local environmental laws, regulations and rulings, including relevant business practices."

Health and Safety Code section 25175 requires DTSC to follow certain procedures and consider many factors prior to subjecting any generator to increased fees. The existing procedures in California Code of Regulations, title 22, section 66266.1, do not conform to the requirements set forth in Health and Safety Code section 25175 and such procedures must be clearly spelled out in the regulations to be enforceable. Therefore, California Code of Regulations, title 22, section 66266.1 is being revised in this rulemaking to be consistent with this statute.

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

There are no federal regulations that are analogous to the proposed regulations.

STUDIES RELIED ON

The California Environmental Protection Agency Economic Analysis Unit conducted an analysis of the economic impact of the proposed regulations. The analysis concluded that none of the proposed compliance options would impose a significant adverse economic impact on businesses.

DTSC will file a "Notice of Exemption" for this rulemaking package to satisfy the requirements of the California Environmental Quality Act (CEQA). The basis of this exemption is California Code of Regulations, title 14, section 15061, subdivision (b)(3), which states that "with certainty, no possibility of a significant effect on the environment.

ALTERNATIVES CONSIDERED

DTSC held three advisory committee meetings during the fall of 2000. As a result of comments received, these regulations were proposed. No additional reasonable alternatives to the current proposal were presented at the meetings, nor have any otherwise been identified or brought to the attention of DTSC.

DTSC considered four alternatives when developing the proposed regulations. The alternatives considered and the reason one alternative was chosen versus another will be briefly described in this section.

Chosen Alternative: DTSC selected the option of listing specific hazardous wastes that DTSC deems are both economically and technologically feasible to recycle. Some of the wastes on the current list no longer meet the criteria of hazardous waste, and DTSC has removed them from the proposed list. Four hazardous wastes are being added to the list because there is a strong infrastructure in place to recycle them, which will result in little or no impact to generators. Some wastes are being removed from the list because they have been reclassified and are no longer considered to be hazardous waste.

Alternative 1: DTSC considered placing criteria in regulations that generators would apply to their waste streams to determine if their wastes were economically and technologically feasible to recycle. Although this option showed the promise of requiring a greater quantity and variety of hazardous waste to be recycled, it proved too subjective to be reliable and efficient.

Alternative 2: DTSC considered updating the existing List of Recyclable Hazardous Waste Types by adding and removing some wastes. The current list does not define the seven (7) waste “types”, nor are the waste “types” defined elsewhere in statute or regulations. DTSC found that some potential additions to the list did not fit any of the existing categories, while other possible additions fit more than one category. Because the term waste “types” is ambiguous, the Technical Advisory Committee (Committee) recommended that DTSC remove this term in favor of listing each recyclable hazardous waste specifically.

Alternative 3: DTSC considered maintaining the current list of wastes and removing the references to waste “types” only. However, the current list includes many materials that are not regulated as hazardous wastes, such as unused laboratory-grade products and empty containers. It is preferable to recycle these materials even though they are not regulated as hazardous waste, but the statute only authorizes DTSC to create a list “...of specified hazardous wastes.” Because these materials are classified as hazardous materials, not hazardous wastes, they are not manifested as hazardous wastes. Therefore, DTSC chose not to place them on the revised list.

DEVELOPMENT OF THE CHOSEN ALTERNATIVE

DTSC is mandated by Health and Safety Code section 25175 to prepare a list of recyclable hazardous wastes. DTSC relied upon several sources to compile the revised List of Recyclable Hazardous Wastes. First, DTSC sent voluntary questionnaires to the regulated community to solicit information pertinent to the hazardous wastes generated and recycled in California. Second, DTSC relied heavily upon input from the Committee whose formation was mandated by Health and Safety Code section 25175, subdivision (a)(4) to advise DTSC on development of the proposed regulations. The Committee consisted of members of the regulated community, environmental groups, representatives of the Certified Unified Program Agencies (CUPA) and DTSC staff. The Committee provided information for the development of this rulemaking package and participated in the review process throughout the subsequent development of the proposed regulations. Third, DTSC utilized data from the Uniform Hazardous Waste Manifest database from 1998 and 1999. Emphasis was placed on 1999 data, the most recent data at the time. Based upon the information gathered from these sources, DTSC staff determined which hazardous wastes were feasible to recycle.

The current (original) list was created in response to Assembly Bill No. 1593 (Lockyer, 1977). Materials on the current list are liquid materials or liquid wastes (the one exception being empty containers which once contained liquids). The list was derived from

information contained in the California Liquid Waste Hauler Report (CLWHR) data base that tracked liquid wastes and liquid materials. In the late 1970's and through the early 1980's, DTSC required waste haulers to use a CLWHR. The CLWHR data was the only source of information that DHS had about the generation, disposal, and recycling activities at that time and is one reason why the current list is comprised mainly of liquids. The other reason is that in the 1970's, only a fraction of the solid wastes that are regulated today as hazardous waste under the Resource Conservation and Recovery Act (RCRA) authorized program were regulated in California. In the mid-1980's, DTSC required for the first time, the use of registered hazardous waste transporters and federally mandated hazardous waste manifests for many solid wastes.

The proposed revisions, creating a "List of Recyclable Hazardous Wastes," are based on the Uniform Hazardous Waste Manifest system, because it is the only method available to DTSC to track the recycling and disposal of hazardous wastes. An early review of the waste code system by DTSC staff revealed that waste codes (see Appendix III) do not allow the tracking of hazardous waste with the degree of specificity required to meet the intent of the statute, because the codes are based on broad categories rather than specific waste streams. To remedy this situation and in order to comply with the requirements of Health and Safety Code section 25160.1, DTSC staff are working on another rulemaking that will modify the waste code system. That rulemaking package will create waste codes for specific waste streams, including some of those waste streams proposed in the current rulemaking to be placed on the revised List of Recyclable Hazardous Wastes. The goal of implementing a system that allows DTSC to track the disposal and recycling of specific recyclable hazardous wastes will be more achievable once both rulemakings are adopted and become effective.

After DTSC addressed the waste code/tracking issue, staff started work on revising the list. DTSC solicited the Committee's guidance on a number of topics, including: how to create the list, potential hazardous wastes that the Committee felt should or should not be placed on the new list, criteria for determining if recycling a waste is economically feasible, and methods that industry and DTSC could use to share information on the recyclability of various waste streams.

Initially, the Committee focused on developing definitions of "economically feasible" and "technologically feasible" that DTSC would use to determine if a specific hazardous waste was potentially recyclable. The Committee developed categories of technological feasibility and economic feasibility to be used as guides for hazardous wastes items that would be on the list. DTSC combined this information with the assumption that some hazardous wastes are economically and technologically feasible to recycle because a

majority of the generators of those hazardous wastes are currently recycling them. If a majority of generators are recycling a particular hazardous waste, it is likely that the remaining generators could also recycle the same waste.

The criteria and factors used to implement this approach are presented in Tables 1 and 2 of this document.

Table 1

Criteria For Identifying Wastes that are Feasible to Recycle
<ol style="list-style-type: none">1. A review of the hazardous waste manifest data demonstrates one of the following:<ol style="list-style-type: none">a. A majority of the specific hazardous waste generated is currently recycled, orb. A majority of the generators of a specific hazardous waste currently recycle it.2. In the absence of manifest data (for hazardous wastes that are exempt from the manifesting requirements, such as used oil) other available data support the criteria in 1.a. or 1.b. above.3. The hazardous waste is otherwise known to be widely recycled.

Table 2

Factors Considered for Identifying Wastes that are Feasible to Recycle
<ol style="list-style-type: none">1. Is the waste generated in sufficient quantities to support recycling?2. Can the waste be recycled onsite?3. Can the waste be recycled offsite?4. Will the net charge to the generator for recycling the waste be less than five times the cost of disposing of the waste?5. Is a marketable product produced from the recycling? Is there demonstrable market demand for the product?6. If the hazardous waste is widely generated (e.g., fluorescent lamps), is there a collection infrastructure in place for the recyclable material? Can the existing infrastructure handle the increased capacity?7. Is there more than one recycling facility in California? If yes, are there at least two facilities with different owners/operators?8. Are the facilities geographically dispersed throughout California?9. Is there any recycling capacity outside California?10. What are the hazardous constituents typically present in the specific hazardous waste? Is the primary hazardous constituent (in the waste) being recycled?11. Are there or may there be potential contaminants that may interfere with the identified recycling process(es)?12. Does the primary method of recycling generate new or more hazardous wastes?13. Does the recycling pose any significant increased risks?14. Are there specific waste codes or other methods in place to allow tracking of recyclable hazardous wastes?15. Any there any other factors or concerns DTSC may wish to consider?

DTSC identified potential additions as well as potential deletions to the revised list from three sources: the Voluntary Recycling Survey (Table 3), the Technical Advisory Committee (Table 4) and the Uniform Hazardous Waste Manifests (Table 5).

Table 3

Potential Additions to the List Based on the Voluntary Recycling Survey
NOTE: Some of these specific hazardous wastes were indicated on multiple responses.
Latex paint waste
Plastic and steel drums (pesticide containers)
Unused pesticides
Oily water
Oily solid wastes
Freon 113
Expired chemicals
Cathode ray tubes (used in computer monitors and televisions)
Antifreeze
Aerosol containers
Used oil
Photo processing wastes - silver
Household hazardous chemicals
Oil bearing secondary materials
Dry-cell batteries/alkaline batteries
Lithium batteries
Obsolete electronic devices (e.g., computers, televisions, radios)
Fluorescent light tubes
Oil filters

Table 4

Potential Additions to the List Based on Input from the Technical Advisory Committee
Antifreeze
Used oil
Lead-acid batteries
Household batteries - all types
Fluorescent lamps
Hazardous wastes currently listed in California Code of Regulations, title 22, section 66266.2*
*The Technical Advisory Committee noted that DTSC had previously determined that the hazardous wastes are feasible to recycle.

Table 5

Potential Additions to the List Based on Review of the Hazardous Waste Manifest Data	
NOTE: Based on 1999 Tanner Report	
<u>Waste Code</u>	<u>Description</u>
<i>GREATER THAN 90% RECYCLED*</i>	
251	Still bottoms with halogenated organics
613	Auto shredder waste
<i>GREATER THAN 70% RECYCLED*</i>	
541	Photochemical/photoprocessing waste
133	Aqueous solution with $\geq 10\%$ total organic residue
211	Halogenated solvents
212	Oxygenated solvents
221	Waste oil and mixed oil
<i>GREATER THAN 60% RECYCLED*</i>	
121	Alkaline solution with metals
122	Alkaline solution without metals
132	Aqueous solution with metals (restricted levels)
135	Unspecified aqueous solution
171	Metal sludge
342	Organic liquids with metals
343	Unspecified organic liquid mixture
512	Other empty containers (30 gallons or more)
724	Liquids with lead > 500 ppm
<i>GREATER THAN 50% RECYCLED*</i>	
134	Aqueous solution < 10% total organic residues
141	Off-specification, aged, or surplus inorganics
213	Hydrocarbon solvents
223	Unspecified oil containing waste
271	Organic monomer waste (includes unreacted resins)
711	Liquids with cyanide > 1000 ppm
723	Liquids with hexavalent chromium > 500 ppm
*The "percent recycled" is the percent of hazardous waste (based in tons) that was recycled after it was generated.	

The following is a discussion of each candidate waste and the necessity of including it on the List of Recyclable Hazardous Wastes proposed by this rulemaking.

CANDIDATE RECYCLABLE HAZARDOUS WASTES

Antifreeze (ethylene glycol and propylene glycol)

Waste antifreeze often contains sufficient concentrations of metals such as lead and chromium to exhibit the characteristic of a hazardous waste. Used antifreeze rarely contains contaminants that prevent it from being recycled. Antifreeze may be recycled onsite (at a service station), in a closed loop or batch system, or at an offsite facility through distillation. In addition, mobile recycling services (transportable treatment units) are available in California.

Because there is no specific waste code for used antifreeze, there is no manifest data which can demonstrate that used antifreeze is recycled. However, DTSC has certified technologies and issued permits for the recycling of used antifreeze. Committee members advised DTSC that used antifreeze is widely recycled in California. Based on this information, DTSC has made a preliminary determination that used antifreeze is economically and technologically feasible to recycle and proposes to place it on the List of Recyclable Hazardous Wastes.

Used Oil

Used oil is required to be recycled pursuant to Health and Safety Code section 25250. The California Integrated Waste Management Board reports that 64.5 million gallons of lubricating oil were recycled in 1998 and 69.2 million gallons were recycled in 1999. This corresponds to a recycling rate of 70% in 1998 and 71% in 1999. Hazardous waste manifest data provide additional support that used oil and oily wastes are widely recycled. Used oil is typically transported to a permitted hazardous waste facility where it is refined or blended to produce fuel. In 1999, California waste code 221 (waste oil and mixed oil) comprised 22% of all hazardous waste transported. In 1999, 591,112 tons of used oil were generated. Of this, 70% received an R01(recycled) code on the manifest. Based on this information, DTSC has made a preliminary determination that used oil is economically and technologically feasible to recycle and should be added to the List of Recyclable Hazardous Wastes.

Lead-acid Batteries

Pursuant to California regulations for the management of lead-acid storage batteries, they are not required to be manifested if they are transferred to a person who recycles the batteries. There is no specific waste code for lead-acid batteries, so manifest data does not support the fact that batteries are recycled. Additionally, DTSC no longer requires battery collectors and recyclers to submit an annual battery report. However, data from the early 1990's (DTSC last collected the reports in 1993) support the conclusion that lead-

acid batteries are widely collected and directed to battery recyclers and lead smelters.

The permitted recyclers typically de-manufacture the batteries and recover the lead through smelting. DTSC has made a preliminary determination that lead-acid batteries are economically and technologically feasible to recycle and should be added to the List of Recyclable Hazardous Wastes.

Household Batteries (all types)

Some members of the Committee recommended that dry-chemistry batteries be placed on the list. They claimed that the technology exists to recycle these batteries and that DTSC's universal waste regulations promoted the recycling of the batteries sufficiently to warrant placing the batteries on the list. Presently there is an insufficient infrastructure for collection and shipment to recycling centers. DTSC is working with an interagency workgroup to address these infrastructure issues on a four year schedule. In four years, the current exemptions for household and small quantity generator hazardous household batteries will sunset. Upon development of a robust collection and transportation infrastructure, DTSC may reevaluate adding household batteries to the List of Recyclable Hazardous Wastes.

Fluorescent Lamps

Some members of the Committee recommended that fluorescent lamps be placed on the list. While there is a robust and adequate lamp recycling industry in the State with significant capacity also marketed from surrounding states, there is not an adequate infrastructure for collection and shipment to the recycling facilities. DTSC is working with an interagency workgroup to address these infrastructure issues on a four year schedule. In four years, the current exemptions for household and small quantity generator hazardous waste lamps will sunset. Upon development of a robust collection and transportation infrastructure, DTSC may reevaluate adding hazardous waste lamps, including fluorescent tubes, to the List of Recyclable Hazardous Wastes.

Commercial chemical products including unused laboratory-grade products

As previously mentioned, "commercial chemical products and unused laboratory chemicals" is a broad category that is largely beyond DTSC's current authority to regulate unless they are classified as hazardous wastes. Therefore, DTSC is not proposing to place this category on the List of Recyclable Hazardous Wastes. In the future, DTSC may revise the list to include one or more specific hazardous wastes that fall within the category of commercial chemical products.

Solvents: used or contaminated

- (A) Halogenated solvents such as trichloroethane, perchloroethylene, methylene dichloride, chloroform, carbon tetrachloride, Freons®.
- (B) Oxygenated solvents such as acetone, methyl ethyl ketone, methanol, ethanol, butanol, ethyl acetate.
- (C) Hydrocarbon solvents such as hexanes, Stoddard(mixed hydrocarbon solvent), benzene, toluene, xylenes, paint thinner.

This section of the existing list is the one section that contains a list of materials that generally continues to be regulated today as hazardous waste. Pursuant to current State regulations, used or contaminated organic solvents are considered spent materials and are identified as a waste when reclaimed (i.e., recycled). Therefore, spent organic solvents exhibiting a characteristic of a hazardous waste or originating from a specific or non-specific federally listed source that are sent for recycling or disposal are regulated as hazardous waste.

DTSC's original determination that it is feasible to recycle spent organic solvents (made when the List of Recyclable Hazardous Waste Types was created) remains valid today. Organic solvents are recycled primarily through well-known processes such as distillation and filtration that produce "clean" useable solvents. These technologies have been refined over the years, but the fundamental processes remain unchanged. Hazardous waste manifest data supports the conclusion that it is economically and technologically feasible to recycle spent organics. Approximately 445,000 tons of organic hazardous waste were generated in 1999. Of this wastestream, 371267 tons or 84%, was recycled. Based on this data, DTSC believes spent organic solvents are widely recycled in California.

The List of Recyclable Hazardous Waste Types divides the universe of spent organic solvents into three broad categories, halogenated, oxygenated, and hydrocarbon solvents. It is not possible for DTSC to apply the factors of consideration (please refer to Table 2) to these broad classes of organic compounds. Additionally, within each of these classes there exists organic compounds that do and do not exhibit a characteristic of a hazardous waste and that may and may not be regulated as hazardous waste when used as a solvent. Therefore, these classes (types) are too broad to incorporate into the new List of Recyclable Hazardous Wastes.

The existing list also contains more specific examples of wastes identified through past reviews of the CLWHR. These wastes are organic compounds that are known to be commonly used as solvents and generated and identified as hazardous wastes. DTSC evaluated these specific wastes and made a preliminary determination that the following specific spent organic solvent wastes are economically and technologically feasible to

recycle and should be added to the List of Recyclable Hazardous Wastes: trichloroethane, perchloroethylene, methylene chloride, chloroform, carbon tetrachloride, acetone, methyl ethyl ketone, methyl alcohol, ethyl alcohol, butyl alcohol, ethyl acetate, mixed hydrocarbon solvents, mixed hexanes, benzene, toluene, and mixed xylenes. The word "Stoddard" which is a mixture of hydrocarbon solvents has been replaced by "mixed hydrocarbon solvents" for accuracy.

Used or unused petroleum products

DTSC proposes placing used oil on the List of Recyclable Hazardous Wastes. "Used motor oils and used hydraulic fluids" are categorized, by definition, in waste code number 221 (used oil).

DTSC believes the category of "unused petroleum products" is too broad to be placed on the list. DTSC does not regulate unused petroleum products because they are not classified as hazardous waste. It is therefore inappropriate for DTSC to require generators to recycle "unused petroleum products." DTSC is proposing not to place this category on the List of Recyclable Hazardous Wastes. In the future DTSC may revise the list to include one or more specific hazardous wastes, other than used oil, that fall within the category of "unused petroleum products."

Pickling liquor

Manifest data for waste codes 791 and 792 (liquids with pH <2) indicates these wastes are not widely recycled. Regulatory changes, made after the List of Recyclable Hazardous Waste Types was created, incorporating permit-by rule and elementary neutralization, have greatly reduced the volumes of these waste streams. Therefore, DTSC does not propose to place pickling liquor or spent acid solutions on the List of Recyclable Hazardous Wastes in this rulemaking.

Unspent acids

DTSC believes the category of "unspent acids" is too broad to be placed on the list. In many cases DTSC does not regulate these materials, making it inappropriate for DTSC to require generators to recycle "unspent acids." DTSC does not propose placing this category on the List of Recyclable Hazardous Wastes. In the future DTSC may revise the list to include one or more specific hazardous wastes that fall within the category of "unspent acids."

Unspent alkalis

DTSC believes the category of “unspent alkalis” is too ambiguous to be placed on the list. DTSC does not regulate these materials in most instances making it inappropriate for DTSC to require generators to recycle “unspent alkalis.” DTSC does not propose to place this category on the List of Recyclable Hazardous Wastes. In the future DTSC may revise the list to include one or more specific hazardous wastes that fall within the category of “unspent alkalis.”

Unrinsed empty containers

Manifest data for waste code 512 (empty containers 30 gallons or more) support that these wastes are widely recycled. In the mid 1990's DTSC adopted regulations specific to empty containers that exempt most empty containers from regulation as hazardous waste (Cal. Code Regs., tit. 22, section 66261.7). Based on the small quantity of empty containers that are being manifested and not recycled (approximately 5000 tons in 1999), manifested containers appear to be mostly atypical containers that are unsuitable for recycling (e.g., damaged containers that can no longer be refurbished and reused). Therefore, DTSC is not proposing to place empty containers on the List of Recyclable Hazardous Wastes.

DETAILED STATEMENT OF REASONS

Section 66266.1(a): This subdivision is amended to provide DTSC with greater enforcement capability by removing the 180-day time limit on DTSC to request justification for failure to recycle a waste. This amendment eliminates a time limit that previously reduced DTSC’s ability to enforce the current regulations. The last sentence of the existing regulation, “If the request is made of a person other than an individual, the statement shall be issued by the responsible management of that entity” is eliminated in the proposed amendments because the statement currently exists in statute and is redundant in regulations. This subdivision was amended to be specific about all hazardous waste on the proposed List of Recyclable Hazardous Wastes and to provide better tracking of hazardous waste that “is transported off site for disposal.”

Section 66266.1(b): This subdivision was amended to provide clarity. The word “reclamation” was replaced with “recycling” to include all types of recycling, not just reclamation.

Section 66266.1(c): Health and Safety Code section 25175 requires the generator to provide DTSC with a formal, complete, and detailed statement justifying why the waste was not recycled. The phrase “but need not be limited to” in the current regulations, was

eliminated for clarity. Instead, the phrase “at a minimum the following information” provides the generators with easily understood guidelines regarding the type of information that DTSC is requesting of them.

Section 66266.1(c)(5): This subdivision is amended to make the requirements clearer and consistent with prior language in section 66266.1(c) in which DTSC requests a technologic, economic or other reason for not recycling the hazardous waste. DTSC has provided guidance to the generators by listing the type of information DTSC requires from them so that DTSC can determine the presence or absence of feasibility.

Section 66266.1(c)(5)(E): The words “as such” and “as” were eliminated for clarity.

Section 66266.1(d): This new subdivision allows the generator to submit to DTSC a “determination” it has made that sending its recyclable hazardous waste to be recycled constitutes an unacceptable environmental or business risk. As a result of potential liability, a generator may choose to dispose of, rather than recycle, its hazardous waste. DTSC considered placing certain language from Health and Safety Code section 25175, subdivision(a), paragraph(2), into the proposed regulations. The statutory language states that the generator can make a “good faith determination” that sending the hazardous waste to any recycling facility where it is feasible to recycle the hazardous waste would constitute an unacceptable environmental or business risk. However, “good faith is an intangible and abstract quality with no technical meaning or statutory definition...”¹ As regulatory language, “good faith” lacks sufficient guidance and would fail the clarity standard required by Government Code section 11349, subdivision(c). Therefore, DTSC proposes to provide criteria necessary to make a “good faith determination,” in these regulations. To take advantage of that provision, a generator must include the determination with its justification for disposal statement, which is submitted to DTSC. Generators must provide these determinations to DTSC in the form of a diligent investigation or an environmental audit. An environmental audit is defined in California Code of Regulations, title 4, section 8050 as “an investigation into the Applicant’s (the recycling facility) production operations and its compliance with federal, state, and local environmental laws, regulations, and rulings.”

Section 66266.1(e): This subdivision has been modified to require the generator to identify all information that it believes to be a trade secret, as defined in Health and Safety Code sections 25173 and 25358.2, and to substantiate that claim. Language is also

¹Black, Henry Campbell, *Black’s Law Dictionary*, West Publishing Company, 1979. pp.623-624

added to explain that DTSC will notify the generator after DTSC has made a determination about the trade secret claim. These modifications are made for clarity reasons and to be consistent with current law.

Section 66266.1(f): This is a new subdivision. It was added to be consistent with amendments to Health and Safety Code section 25175. It states that if DTSC finds the generator's waste is economically and technologically feasible to recycle, DTSC will notify the generator, in writing, of these findings.

Section 66266.1(g): This is a new subdivision. It was added for clarity reasons and to be consistent with current law. It states that if a generator disposes of its recyclable hazardous waste thirty (30) days after receiving notification from DTSC declaring that the generator's waste is economically and technologically feasible to recycle, the generator will be subject to a five (5) fold increase in its disposal fees for future disposal of the recyclable hazardous waste.

Section 66266.2: The former list, titled, "List of Recyclable Hazardous Waste Types," is replaced with the revised "List of Recyclable Hazardous Wastes." The background which lead to the modification of the title and content of the "List of Recyclable Hazardous Wastes" is discussed in the "DEVELOPMENT OF THE CHOSEN ALTERNATIVE" section earlier in this document.