



# Department of Toxic Substances Control

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July 3, 2003 (Updated July 15, 2003)

## To Registered Hazardous Waste Transporters:

### **IMPORTANT INFORMATION -- SENATE BILL 489 AND HAZARDOUS WASTE OF CONCERN REPORTING AND DISCLOSURE STATEMENT REQUIREMENTS**

This letter is to inform you of new reporting requirements for transporters of hazardous wastes that are explosive materials, poisonous materials, or poisonous gases.

**It is very important that you determine if you handle these hazardous wastes.**

#### **Senate Bill 489**

In 2002, the California Legislature adopted a number of bills in response to heightened security concerns following the September 11, 2001 attacks. Senate Bill 489 (SB 489-Statutes of 2002, chapter 607, Romero) is intended to increase the security of hazardous wastes of concern that have the potential to be intentionally and effectively used to harm the public in a terrorist or other criminal act. SB 489 implements new requirements for transporters and treatment, storage, and disposal facilities that handle these wastes.

The Department of Toxic Substances Control (DTSC) has adopted emergency regulations to implement this bill. On and after July 10, 2003, the effective date of the emergency regulations, any transporter handling a hazardous waste of concern must:

- (1) Report missing hazardous waste of concern and manifest discrepancies by telephone to DTSC within one day and submit a written report within 5 days of the occurrence (starting July 10, 2003); and
- (2) With your 2004 transporter registration renewal, submit a Disclosure Statement and fingerprints for a criminal background check, unless you are an exempted corporation.

An excerpt from the Hazardous Waste of Concern Regulations is provided with this letter (Attachment 1).

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at [www.dtsc.ca.gov](http://www.dtsc.ca.gov).*

The complete Hazardous Waste of Concern Emergency Regulations is on DTSC's website at [www.dtsc.ca.gov](http://www.dtsc.ca.gov) under Laws, Regulations and Policies.

### **What is a Hazardous Waste of Concern?**

A hazardous waste of concern is defined as a hazardous waste that is identified on the Uniform Hazardous Waste Manifest with one of the following hazard divisions within the U.S. DOT description, or otherwise known as:

- (1) An **explosive material**, hazard division 1.1, 1.2, or 1.3, as defined under Title 49 Code of Federal Regulations, section 173.50 (as revised October 1, 2002); or
- (2) A **poisonous material**, hazard division 6.1, packing group I or II, as defined under 49 Code of Federal Regulations, section 173.132 (as revised October 1, 2002); or
- (3) A **poisonous gas**, hazard division 2.3, as defined under 49 Code of Federal Regulations, section 173.115 (as revised October 1, 2002).

To determine if a hazardous waste is a hazardous waste of concern, check the information provided on the manifest in Box 11 (U.S. DOT Description), the additional information provided in Box J (Additional Descriptions for Materials Listed Above), and check the label(s) and markings on the container. You may also contact the generator of the waste. Shipping names, hazard divisions and packing groups are found in U.S. Department of Transportation regulations, 49 Code of Federal Regulations. The Hazardous Materials Table is found in Section 172.101. DTSC has prepared an excerpt with the names of the materials that are listed in these hazard divisions. The excerpt will be posted on the DTSC website or available by calling 1-800-728-6942.

### **Determining Your Hazardous Waste of Concern Status**

It is critical that transporters determine whether they handle hazardous wastes of concern in order to comply with the reporting requirements and ensure the security of these hazardous wastes.

*If you **do not** handle hazardous wastes of concern, no further action is needed regarding this notification. Any transporter not currently handling these wastes, however, must notify DTSC before starting to handle them in the future.*

*If you **do** handle hazardous wastes of concern, please notify the DTSC Transportation Section as soon as possible so that a disclosure statement form and fingerprint instructions can be mailed to you. Transporters of hazardous wastes of concern must submit this form with new or renewal transporter applications submitted on or after January 1, 2004.*

### **Hazardous Waste of Concern Reporting**

On and after July 10, 2003, transporters are required to report hazardous wastes of concern discovered missing during transport ((Cal. Code Regs, tit. 22, § 66263.32). "Missing hazardous waste of concern" is defined as lost, stolen, or disappeared (Cal. Code Regs, tit. 22, § 66261.111(b)).

Reports are required where the missing waste represents either a reportable quantity or a reportable difference in type.

- (1) **Reportable quantities** of missing hazardous waste of concern are:
  - (A) for bulk waste, variations greater than 3 percent in weight or volume;  
and
  - (B) for containerized waste, any variation in piece count, such as a discrepancy of one drum in a truckload.
  
- (2) **Reportable differences in type** of a hazardous waste of concern are obvious differences that can be discovered by observation of the physical properties of the waste, inspection, or waste analysis (e.g., waste solvent substituted for used oil, or containing hazardous constituents not reported on the manifest that would change the shipping name or waste code).

If an emergency exists or you believe that a crime occurred, such as a theft, please contact law enforcement by calling 911.

You must contact DTSC by telephone within 24 hours of discovering the problem, unless you have resolved it within that time. Transporters must telephone the Complaint Hotline at 1-800-69-TOXIC (1-800-698-6942) and leave the following information:

- (1) Generator name and identification number;
  
- (2) Transporter(s) name(s), identification number(s), and, if available, transporter(s) registration number(s);

(3) Destination facility name and identification number;

(4) Manifest number;

(5) Waste information (lines 11, 12, 13, and 14 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12, Article 7), quantity or volume of waste at issue, weight or volume units, and waste codes; and

(6) Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., on highway or roads, rail line, transfer station, truck stop, etc.).

A written report with the same information, including resolution of the discrepancy or missing waste, must be submitted within 5 days of the occurrence to one of the following addresses:

	<b>Southern California</b>	<b>Northern California</b>
<b>Address</b>	Complaint Coordinator Dept. of Toxic Substances Control Statewide Compliance Division Glendale Branch 1011 North Grandview Avenue Glendale, California 91201-2205	Complaint Coordinator Dept. of Toxic Substances Control Statewide Compliance Division Northern California Branch 8800 Cal Center Drive Sacramento, California 95826-3200
<b>Counties</b>	Los Angeles, Ventura, Santa Barbara, San Bernardino, Orange, Riverside, San Diego, or Imperial.	Any other California County, or out of state.

To determine the appropriate DTSC address, please use the county where shipment originated, i.e., where the hazardous waste generator is located. If the generator is located out of state, submit the report to the Sacramento address.

These immediate notification requirements replace the previous notifications required by the Manifest Discrepancy Regulations adopted in April 2002. The scope of the reporting was expanded by SB 489 to include losses discovered during transportation.

### **Hazardous Waste of Concern Disclosure Statement and Fingerprinting**

If you operate as a transporter that currently handles or intends to handle hazardous wastes of concern, you are required to provide DTSC with information regarding the compliance history of your company. This includes completion of a Disclosure

Statement and submission of fingerprints for any person who owns more than five (5) percent of the company (Health & Saf. Code § 25112.5(a)).

**Transporters that handle hazardous wastes of concern must submit a completed Disclosure Statement to DTSC beginning January 1, 2004 at the same time you renew your registration. Submit the registration application to the Transportation Section and the Disclosure Statement separately to the following address:**

Department of Toxic Substances Control  
Hazardous Waste Management Program  
Permit Program Development Section  
Attention: David Wright  
P. O. Box 806  
Sacramento, California 95812-0806

Copies of the Transporter's Disclosure Statement guidance and document will be posted by October 2003 on DTSC's website at [www.dtsc.ca.gov/](http://www.dtsc.ca.gov/) under Managing Hazardous Waste, Hazardous Waste Transporters or can be obtained by contacting the Transportation Section at (916) 255-4368.

The passage of SB 489 authorizes DTSC to receive criminal history summaries from the Department of Justice (DOJ) for its Disclosure Statement requirement pursuant to Health and Safety Code section 25112.5 for the purpose of background checks and requires a Disclosure Statement for individuals that manage hazardous wastes of concern as specified in Health and Safety Code Article 6.6.

In order to complete the fingerprint/background check requirement, any partner, officer, director or individual, including any sole proprietor, identified within the Disclosure Statement as holding more than a 5 percent interest in the equity or debt liability of the business concern, must submit properly completed fingerprint cards or "live scan". This can be accomplished by the applicant(s) visiting any of the Applicant Live Scan satellite locations where fingerprint images and related data are electronically transmitted to DOJ. Applicant Live Scan information and fingerprint locations (including hours of operation and costs related to live scan fingerprinting) can be obtained on the DOJ website at [www.caag.state.ca.us/fingerprints/index.htm](http://www.caag.state.ca.us/fingerprints/index.htm).

Applicants are to provide the Applicant Live Scan operator with ORI Code Number, which identifies DTSC as the agency to which DOJ will provide responses related to fingerprints and criminal background summaries. (This number will be provided to you with the guidance document.) Once the fingerprints and background summaries are received by DOJ, they are electronically processed by the DOJ Networked AFIS

Transaction Management system. Live scan submissions, which have no data or quality errors and do not result in possible criminal history matches, are processed automatically with an electronic response to a secured computer within DTSC. DOJ will also coordinate other electronic processes resulting from the automated submissions of fingerprints, including forwarding the fingerprints to the FBI.

### **Corporate Exemptions From Disclosure Statement and Fingerprint Requirements**

Some corporations are exempt from submitting the Disclosure Statement and/or from the fingerprint/criminal background summary requirements. Public corporations that are listed by the Securities and Exchange Commission (SEC) or are wholly owned subsidiaries of a SEC listed company are exempt from the requirement to submit fingerprints. To also be exempt from the Disclosure Statement requirements, a corporation must have operated a hazardous waste facility or interim status facility in California since January 1, 1984.

Corporations claiming these exemptions must still report all missing hazardous wastes of concern and must meet all of the requirements of Health and Safety Code section 25112.5(b) and (c). The following corporations are exempt from one or both of these requirements:

- A corporation, the stock of which is listed on a national securities exchange and registered under the Securities Exchange Act of 1934 (15 U.S.C. sec. 78a et seq.) or a subsidiary of such a corporation, is not subject to the **owner fingerprint requirement**.
- Corporations with stock listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.) or a subsidiary of that corporation, in lieu of submitting a Disclosure Statement, may submit to DTSC copies of all periodic reports, including, but not limited to, those reports required by Section 78m of Title 15 of the United States Code and Part 229 (commencing with Section 229.10) of Chapter II of Title 17 of the Code of Federal Regulations that the corporation or subsidiary has filed with the Securities and Exchange Commission the three years immediately preceding the submittal. **This exemption only applies if the corporation or subsidiary has held a hazardous waste facilities permit or operated a hazardous waste facility under interim status in California pursuant to Section 25200 or 25200.5 as of January 1, 1984 and continuously since then.**

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If a company believes that it qualifies for these exemptions, it needs to submit a letter to DTSC at the above address providing an explanation of its exemption eligibility.

If you having any questions concerning DTSC's new requirement for the submittal of Disclosure Statements or the procedures for ascertaining the fingerprint/background check requirement, please contact David Wright at (916) 322-0584 or [dwright1@dtsc.ca.gov](mailto:dwright1@dtsc.ca.gov).

If you have any further questions or to notify DTSC that you are a transporter of hazardous wastes of concern, please contact the Transportation Section at (916) 255-4368.

Sincerely,

[Original signed by]

Sherri Lehman, Chief  
Compliance Program Development Branch  
Hazardous Waste Management Program

Attachment

## EXCERPT FROM HAZARDOUS WASTES OF CONCERN REGULATIONS

Please consult the DTSC website at [www.dtsc.ca.gov](http://www.dtsc.ca.gov), under Managing Hazardous Waste, Hazardous Waste Transporters, for the date of approval or any changes.

1. Add section 66261.111 to the California Code of Regulations, title 22, division 4.5, chapter 11, article 5, to read as follows:

### § 66261.111. Hazardous Waste of Concern Criteria.

(a) A hazardous waste of concern is a hazardous waste that is identified on the Uniform Hazardous Waste Manifest with one of the following hazard divisions within the U.S. DOT description, or otherwise known as:

(1) An explosive material, hazard division 1.1, 1.2, or 1.3, as defined under 49 CFR section 173.50 (as revised October 1, 2002); or

(2) A poisonous material, hazard division 6.1, packing group I or II, as defined under 49 CFR section 173.132 (as revised October 1, 2002); or

(3) A poisonous gas, hazard division 2.3, as defined under 49 CFR section 173.115 (as revised October 1, 2002).

(b) "Missing hazardous waste of concern" has been lost, stolen, or has disappeared. It does not include the unintentional release of a hazardous waste of concern within the meaning of 49 CFR section 171.16 (as revised October 1, 2002).

(c) Specified reporting requirements for missing hazardous wastes of concern apply in instances where the missing waste represents a reportable quantity or a reportable difference in type.

(1) Reportable quantities of missing hazardous waste of concern are:

(A) for bulk waste, variations greater than 3 percent in weight or volume; and

(B) for containerized waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Reportable differences in type of a hazardous waste of concern are obvious differences that can be discovered by observation of the physical properties of the waste, inspection, or waste analysis (e.g., waste solvent substituted for used oil, or containing hazardous constituents not reported on the manifest that would change the shipping name or waste code).

NOTE: Authority cited: Sections 25169.6, and 25169.8, Health and Safety Code.  
Reference: Sections 25169.5, 25169.6, 25169.7, and 25169.8, Health and Safety Code.

2. Add section 66263.32 to the California Code of Regulations, title 22, division 4.5, chapter 13, article 3, to read as follows:

**§ 66263.32. Transporter Reporting Requirements for Missing Hazardous Waste of Concern.**

(a) The provisions of this section apply to the transporter of a hazardous waste of concern, as defined in section 66261.111(a).

(b) Upon discovering that a hazardous waste of concern is missing during transportation of that waste, and the waste at issue represents a reportable quantity or a reportable difference in type, as specified in section 66261.111(b) and (c), the transporter shall immediately attempt to reconcile the reportable quantity or difference with the generator (e.g., with telephone conversations). If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, the transporter shall immediately notify the Department by calling 1-800-69-TOXIC (1-800-698-6942) and provide the following information:

(1) Generator name and identification number;

(2) Transporter(s) name(s), identification number(s), and, if available, transporter(s) registration number(s);

(3) Destination facility name and identification number;

(4) Manifest number;

(5) Waste information (lines 11, 12, 13, and 14 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12, Article 7), quantity or volume of waste at issue, weight or volume units, and waste codes; and

(6) Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., on highway or roads, rail line, transfer station, truck stop, etc.).

(c) If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, in addition to complying with subsection (b), within 5 days after the reportable quantity or difference was discovered, the transporter shall submit to DTSC a letter describing the reportable quantity or difference and attempts to reconcile it, and a copy of the manifest.

(1) If the hazardous waste generator where the shipment originated is located in the counties of Los Angeles, Ventura, Santa Barbara, San Bernardino, Orange, Riverside, San Diego, or Imperial, the transporter shall submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201

(2) If the hazardous waste generator where the shipment originated is located in any other county, or outside California, the transporter shall submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Northern California Branch, 8800 Cal Center Drive, Sacramento, California 95826-3200.

(d) This section shall not be interpreted or applied to require that any written report required to be made pursuant to 49 Code of Federal Regulations, section 171.16 (as revised October 1, 2002) also be made, copied, or delivered by the transporter to DTSC.

NOTE: Authority cited: Sections 25169.6, 25169.7 and 25169.8, Health and Safety Code. Reference: Sections 25169.5, 25169.6, 25169.7, and 25169.8 Health and Safety Code.