



Alan C. Lloyd, Ph.D.
Agency Secretary
Cal/EPA



Department of Toxic Substances Control

1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806



Arnold Schwarzenegger
Governor

TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

HAZARDOUS WASTES OF CONCERN: REPORTING BY GENERATORS

Department Reference Number: R-03-18

Office of Administrative Law Notice File Number: Z-05-0830-05

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend sections 66261.111 and 66262.10 and add section 66262.44 to the California Code of Regulations, title 22.

These regulations would make the Hazardous Waste of Concern (HWC) reporting requirements adopted in July 2003 applicable to generators of HWC. DTSC adopted permanent emergency regulations (R-03-02) as mandated by Statutes 2002, chapter 607 (Sen. Bill No. 489 (2001-2002 Reg. Sess.) Romero), hereafter referred to as SB 489, that established reporting requirements for HWC. The provisions enacted as a result of SB 489 were intended to increase the security of HWC because of the potential to use those wastes intentionally and effectively to harm the public in a terrorist or criminal act. As such, any person, as defined in Health and Safety Code section 25118, handling HWC must report missing HWC. The permanent emergency regulations adopted in July 2003, inadvertently omitted generators of HWC. The permanent emergency regulations that were adopted in July 2003 are applicable only to transporters and treatment, storage and disposal facilities that handle HWC.

Since generators of HWC were inadvertently omitted in the permanent emergency regulations adopted in July 2003, DTSC proposes to adopt regulations that will include generators of HWC. The proposed regulations will require a generator to immediately provide a verbal notification, within 24 hours after a HWC has been discovered to be missing during storage or a difference in type has been identified when it is received at the designated facility. In addition, the generator of HWC must report missing HWC in writing within five days of discovery.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

A written comment period has been established commencing on September 9, 2005, and closing on October 24, 2005. DTSC will hold a public hearing on the proposed

regulations at 10:00 a.m. on October 24, 2005 in the Byron Sher Auditorium, 2nd Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on October 24, 2005 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building's public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

If you have special accommodation or language needs, please contact Mr. Mark Abrams, Regulations Coordinator, Environmental Analysis and Regulations Section, at (916) 322-2833 or by e-mail at regs@dtsc.ca.gov by October 17, 2005. TTY/TDD users may dial 7-1-1 for the California Relay Service. Speech-to-Speech services are available by calling (800) 735-0373 or via TTY at (800) 735-0193.

AUTHORITY AND REFERENCE

These regulations are being proposed under the authority of the Health and Safety Code sections 25150 and 58012 which require that DTSC adopt and revise when appropriate regulations for the management of hazardous wastes.

Health and Safety Code section 25150. This section grants DTSC authority to adopt standards dealing with the management of hazardous waste.

Health and Safety Code section 58012. This section grants DTSC authority to adopt regulations to execute its duties.

These regulations implement, interpret, or make specific the following:

- Health and Safety Code section 25169.7.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law

In 2002, the Legislature adopted SB 489 in response to security concerns following the attacks of September 11, 2001. SB 489 intended to increase the security of hazardous wastes that could be intentionally used to effectively harm human health and/or the environment. SB 489 implemented requirements for "any" person handling HWC by amending Health and Safety Code section 25112.5 and adding article 6.6 beginning with section 25169.5 to chapter 6.5 of division 20 related to hazardous waste management. Further, SB 489 required DTSC to adopt regulations by July 1, 2003 that identified a list of HWC with reporting quantities that required a facility owner or operator and/or transporter to file a report with DTSC if the wastes were missing from either storage or while in transport. Health and Safety Code section 25169.7, as amended by SB 489, required any person owning or operating a hazardous waste facility that handles a HWC to submit a disclosure statement to DTSC by January 1, 2004 containing the information referenced in section 25112.5. It also required any registered hazardous waste transporter to submit a disclosure statement upon the request of DTSC.

Health and Safety Code

A person as defined in Health and Safety Code section 25118 means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. "Person" also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

A hazardous waste facility as defined by Health and Safety Code section 25117.1 means all contiguous land and structures, other additions, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment,

transfer, storage, resource recovery, disposal, or recycling hazardous waste management units, or combinations of these units.

California Code of Regulations Title 22

As mandated by SB 489, DTSC adopted implementing regulations that required a transporter, permitted facility, or interim status facility that handles HWC to report missing HWC within 24 hours and to submit a disclosure statement and fingerprints for a criminal background check. Transporters are required to determine if they handle HWC and notify DTSC if they do or plan to in the future.

The permanent emergency regulations adopted in July 2003 in the California Code of Regulations, title 22 defined:

- HWC in section 66261.111,
- Transporter reporting requirements for missing HWC in section 66263.32
- Management requirements for missing HWC under Manifest Discrepancies in section 66264.72(c) and 66264.78 for permitted hazardous waste facilities; 66265.72 (c) and 66265.78 for interim status hazardous waste facilities.

Health and Safety Code section 25169.7 requires “any” person handling any HWC to report missing HWC immediately and as specified in the regulations adopted pursuant to section 25169.6. However, the permanent emergency regulations adopted in July 2003 do not specify any requirements for generators. This ambiguity can potentially create mismanagement of HWC by generators of hazardous wastes.

Current regulations in California Code of Regulations, title 22, chapter 12, article 1, require that generators must comply with section 66261.111 for determining whether or not the waste is hazardous, 66262.40(c) and (d) for record keeping and 66262.43 for additional reporting when applicable.

There are no federal requirements to address HWC.

Policy Statement Overview

These regulations will expand the scope of applicability of the HWC permanent emergency regulations that were adopted by DTSC on July 1, 2003 (DTSC reference number R-03-02) to apply to “any person handling hazardous waste of concern,” as required by Senate Bill 489. The provisions enacted by SB 489 were intended to

increase the security of HWC because of the potential to use those wastes to intentionally harm human health and or the environment.

Proposed Regulations

The proposed regulations will require each generator handling HWC to report missing HWC by phone within 24 hours and in writing within five days. This requirement is not anticipated to be a significant increase in economic impact because generators are currently required to submit exception reports to DTSC if they do not receive a copy of the manifest back from the receiving facility within 35 days. As such, generators have an established procedure for filing reports with DTSC.

It is anticipated that generators will be able to comply with the proposed regulations using existing staff and resources since identification of wastes is inherent with their operation in order to properly handle materials for safety as well as for compliance with existing requirements.

The proposed regulations are consistent with the Hazardous Materials Transportation Act of 1994 of title 49 of the United States Code and are based on the risk management criteria implicit in the establishment of the Hazardous Materials Table and related regulations by United States Department of Transportation.

If DTSC determines that the regulations adopted could be preempted by revisions to the Hazardous Materials Transportation Authorization Act of 1994, DTSC will apply to the Secretary of Transportation for a waiver of preemption pursuant to subsection (e) of section 5125 of title 49 of the United States Code and in accordance with Health and Safety Code section 25169.7 (d).

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC anticipates that this rulemaking will be exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3). The changes resulting from this rulemaking result in an increase in reporting requirements. The reporting requirements do not have the potential to cause significant adverse environmental effects. As such, a draft Notice of Exemption will be available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

BUSINESS REPORT

A generator handling HWC must report missing HWC by phone within 24 hours and in writing within five days. This requirement is not anticipated to be a significant increase in economic impact because generators are currently required to submit exception reports to DTSC if they do not receive a copy of the manifest back from the receiving facility within 35 days. DTSC finds the reports required by the proposed regulations are necessary for the protection of public health and the environment.

FISCAL IMPACT ESTIMATES:

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: DTSC has made a preliminary determination that the proposed regulations will have no impact on State revenue or costs.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.

Effect on Housing Costs: DTSC has made an initial determination that there will be no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Statewide Adverse Economic Impact on Businesses:

DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

- (A) **Creation or elimination of jobs within California** – DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.
- (B) **Creation of new businesses or the elimination of existing businesses within California** – DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.
- (C) **Expansion of businesses currently doing business in California** – DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

Effect on Small Businesses:

DTSC has determined that provisions of this rulemaking may have a minor effect on small businesses.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invite interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be

obtained from Mr. Mark Abrams of DTSC's Environmental Analysis and Regulations Section as specified below. The information upon which DTSC relied is also available at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Mr. Mark Abrams at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Hortensia Muniz of DTSC at (916) 324-1818 or, if unavailable, Mr. Jan Radimsky of DTSC at (916) 324-1819. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends or repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail or fax to:

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Department Reference Number: R-03-18
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Mr. Mark Abrams, Regulations Coordinator
Environmental Analysis and Regulations Section
Department of Toxic Substances Control

Mailing Address: P.O. Box 806
Sacramento, CA 95812-0806

E-mail Address: regs@dtsc.ca.gov

Fax Number: (916) 323-3215

Mr. Abrams' phone number is (916) 322-2833. If Mr. Abrams is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.