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TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

Consolidated Universal Waste Regulations and Authorized Treatment of Electronic Hazardous Waste - Final Regulations

Department Reference Number R-2006-02
Office of Administrative Law Notice File Number: Z-2008-0616-03

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to: amend California Code of Regulations, title 22, division 4.5, sections 66260.10, 66260.23, 66261.4, 66261.9, 66261.50, appendix X of chapter 11, 66264.1, 66265.1, 66273.1 through 66273.7, 66273.8, 66273.9, 66273.30 through 66273.33, 66273.34 through 66273.41, 66273.51 through 66273.56, 66273.60 through 66273.62, 66273.70, 67100.2, and article 3; add sections: 66260.201, 66260.202, 66273.33.5, 66273.71 through 66273.77; repeal and reserve sections: 66273.7.1 through 66273.7.10 and article 2; repeal 66273.10 through 66273.21, and 66273.80 through 66273.90; repeal and amend article 6 to implement the Electronic Waste Recycling Act of 2003 (Stats. 2003, ch. 526 as amended by SB 50, Stats. 2004 ch. 863); and amend articles 4 and 7 and renumber articles 5 and 6. The proposed regulations will implement Public Resources Code, part 3, division 30, chapter 8.5 (commencing with Pub. Res. Code §42460) and Health and Safety Code, division 20, chapter 6.5, article 10.3 (commencing with Health and Saf. Code §25214.9).

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

A written comment period has been established commencing on June 27, 2008, and closing on August 11, 2008. DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on August 11, 2008 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 August 11, 2008 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. 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 up to 15 minutes. Please allow adequate time to sign in before being directed to the hearing room.

If you have special accommodation or language needs, please contact Ms. Laura Hayashi, Regulations Coordinator, Regulations Section, at (916) 322-6409 or by e-mail at regs@dtsc.ca.gov by August 1, 2008. TTY/TDD users may dial 7-1-1 for the California Relay Service.

In accordance with the California Government Code and Americans with Disabilities Act requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette, etc. as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact Adrian Recio at (916) 324-3095 or by e-mail at arecio@dtsc.ca.gov.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:
Health and Safety Code sections 25140, 25141, 25150, 25150.2, 25159, 25201, 25214.6, 25214.9, 25214.10, 25214.10.1, 25219.1, and 58012; and Public Resources Code section 42475.

These regulations implement, interpret, or make specific the following:
Health and Safety Code sections 25140, 25141, 25150, 25150.2, 25159.5, 25201, 25212, 25214.6, 25214.9, 25214.10, 25214.10.1, 25219, 25219.1, and 25219.2;
Public Resources Code sections 42463, 42465.2, 42476.5, and 42479; and
40 Code of Federal Regulations sections 261.39, 261.40, 261.41, and 273.56.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing State Law

The following hazardous wastes are eligible for regulation as universal wastes under California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with

§66273.1): cathode ray tube (CRT) materials; consumer electronic devices; thermostats; batteries; mercury-containing equipment; and lamps.

Senate Bill 20 (Stats. 2003, ch. 526, 2003) enacted Health and Safety Code section 25214.9. Subdivision (b) of section 25214.9 authorizes DTSC to adopt management standards, by regulation, as an alternative to standards otherwise required by the hazardous waste control law for any specified activity that involves the management of a hazardous electronic waste. Emergency regulations (R-03-19¹), adopted by DTSC on June 7, 2004, amended California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with section 66273.1) to provide alternative standards for CRT materials, including CRTs, CRT devices, CRT glass, and “consumer electronic devices,” which are referred to in the emergency regulations simply as “electronic devices.” The R-03-19 regulations were repealed on June 5, 2006, and subsequent emergency regulations, R-2006-02², were adopted and will expire on June 6, 2008 if a Certificate of Compliance is not transmitted to the Office of Administrative Law by June 5, 2008. The R-2006-02 emergency regulations combined the text of R-03-19, and two other previous emergency regulation packages, R-04-12 and R-2005-06 (discussed below), (OAL reference numbers: 04-0526-01E, 04-1216-03E, and 05-0401-21E) into one regulatory text document.

Senate Bill 20 also enacted the Electronic Waste Recycling Act of 2003 of the Public Resources Code (Stats. 2003, ch. 526). The Electronic Waste Recycling Act applies to “covered electronic devices,” as defined in Public Resources Code section 42463, subdivision (f). To identify the initial types of electronic devices subject to the Electronic Waste Recycling Act, DTSC included in the R-03-19 emergency regulations amendments to California Code of Regulations, title 22, division 4.5, chapter 11, appendix X (ten). These regulations set forth a list of the electronic devices that DTSC presumes to be hazardous wastes upon discard and designated all such devices to be covered electronic devices, unless the manufacturer of a specific device obtains DTSC’s concurrence that the device would not be a hazardous waste when discarded. This initial list of covered electronic devices with screens greater than four inches measured on the diagonal: CRTs and devices containing CRTs (CRT devices), desktop monitors, and laptops containing liquid crystal display (LCD) screens.

Senate Bill 50 (Stats. 2004, ch. 863) amended the Electronic Waste Recycling Act of 2003. This bill added Health and Safety Code section 25214.10.1. Subdivisions (b) and (e) of section 25214.10.1 established the use of the presumptive list approach that DTSC adopted in its R-03-19 emergency regulations as the statutorily required approach for identifying covered electronic devices. Pursuant to subdivision (b) of section 25214.10.1, on December 27, 2004, DTSC adopted emergency regulations (R-04-12³) to amend the chapter 11, appendix X list of covered electronic devices to include televisions containing liquid crystal displays and plasma televisions, both with

¹ OAL Reference Number 04-0526-01E

² OAL Reference Number 06-0524-02E

³ OAL Reference Number 04-1216-03E

screens greater than four inches measured on the diagonal. Pursuant to Health and Safety Code section 25214.10.1, subdivision (d), devices on the amended list are subject to the Electronic Waste Recycling Act of 2003, as amended. They are also eligible for management under the alternate standards adopted into California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1) by R-03-19. The R-04-12 regulations were repealed on June 5, 2006, when DTSC adopted emergency regulations under R-2006-02 (see discussion above).

In December 2006, DTSC adopted as emergency regulations (R-2006-05⁴) the inclusion of DVD devices as covered electronic devices, pursuant to chapter 11, appendix X.

Health and Safety Code section 25214.10 requires DTSC to adopt regulations to prohibit an electronic device from being sold or offered for sale in California if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture due to the presence of certain heavy metals. In December 2006, DTSC adopted emergency regulations (R-2006-06⁵) under the provisions established under Health and Safety Code section 25214.10; these regulations will expire in December 2008 (these emergency regulations are also part of the rulemaking, R-2006-02, see discussion above).

Health and Safety Code section 25214.10.1, subdivision (c), requires that the manufacturer of a listed electronic device notify retailers that the electronic device is a covered electronic device subject to the Electronic Waste Recycling Act of 2003, as amended, including the payment of the fee imposed by Public Resources Code, section 42464. The fee program itself is managed by the California Integrated Waste Management Board (CIWMB) under its own regulations. The Health and Safety Code section 25214.10.1, subdivision (c), notification requirements and other notification requirements necessary to implement the Electronic Waste Recycling Act of 2003, as amended, are currently implemented by the R-2006-02 emergency regulations. On April 11, 2005, DTSC adopted other emergency regulations (R-2005-06⁶) which amended the R-04-12 provisions. The R-2005-06 regulations were repealed on June 5, 2006 when DTSC adopted emergency regulations under R-2006-02 (see discussion above).

Existing Federal Law

Existing federal universal waste regulations are set forth at 40 Code of Federal Regulations part 273. These regulations provide streamlined collection and management requirements for hazardous waste batteries, pesticides, mercury-containing equipment (including thermostats) and lamps. They do not address universal waste electronic devices, CRT devices, CRTs, or CRT glass.

⁴ OAL Reference Number 06-1221-03E

⁵ OAL Reference Number 06-1221-02E

⁶ OAL Reference Number 05-0401-21E

On June 12, 2002, (67 Fed. Reg. 40508), the United States Environmental Protection Agency (USEPA) proposed to exclude used CRTs and glass removed from CRTs for recycling from the definition of solid waste. The final rule was published on July 28, 2006 (71 Fed. Reg. 42928). The final rule excludes CRTs from the federal hazardous waste program when sent for recycling.

Policy Statement Overview

Problem Statement:

Recent research has shown that devices containing CRTs are likely to exhibit the characteristic of toxicity due to lead and thus would be classified as hazardous waste, if disposed. Similar findings for other heavy metals have been shown for other electronic devices. Many discarded electronic devices are identified as hazardous wastes in California under the State's existing hazardous waste characteristic of toxicity. As such, these devices may not be disposed of in municipal solid waste landfills. The Electronic Waste Recycling Act of 2003 authorizes the CIWMB and DTSC to establish a program for recycling hazardous electronic waste in California. Implementation of the Act requires DTSC to identify the electronic devices to be included in the recycling program and to authorize the recyclers that will recycle the devices after they are collected. Once identified by DTSC, for purposes of the Act these devices are referred to as "covered electronic devices," and upon discard referred to as "covered electronic wastes."

Current law requires any person who conducts treatment of hazardous waste to first obtain a hazardous waste facility permit or other grant of authorization from DTSC. Treatment is broadly defined to mean, among other things, changing the physical or chemical form of a hazardous waste. Because covered electronic wastes are hazardous wastes, recycling activities, such as those involved with implementation of the Electronic Waste Recycling Act of 2003, constitute treatment of a hazardous waste. Consequently, covered electronic waste recyclers are currently required to obtain hazardous waste facility permits or other specified forms of authorization from DTSC.

Electronic waste recovered for recycling can pose a significant threat to public health, worker safety, and the environment if not properly managed. Consequently, the level of authorization must be commensurate with the hazards involved. Conversely, in order that the State may realize the full potential benefit to human health and the environment that will result from the collection and recycling of covered electronic devices and covered electronic wastes, the level of authorization must also be one that promotes participation by recyclers in the collection and recycling program. To assist DTSC in establishing this balance, the Legislature enacted Health and Safety Code section 25214.9, subdivision (b). This provision authorizes DTSC to adopt regulations, for any activity that involves the management of an electronic waste, which establish alternate management standards to the standards in the hazardous waste control law.

The broad objectives of these regulations are to:

- Implement the Electronic Waste Recycling Act of 2003 regarding the identification and management of covered electronic devices.
- Establish restrictions on the use of heavy metals in covered electronic devices manufactured after January 1, 2007, that contain heavy metals, including cadmium, chromium, lead, and mercury, exceeding the maximum concentrations allowed by the European Union, as required by Health and Safety Code section 25214.10.
- Reorganize California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1) to make chapter 23 more “user friendly,” align state regulations with new federal regulations on management standards for universal waste mercury-containing equipment (MCE) and on the export of certain CRT-containing wastes, and consolidate management standards for CRT material handlers and small quantity and large quantity handlers of universal waste under a single handler category.
- Create a separate article within chapter 23 regarding authorization requirements for handlers who dismantle, drain, or treat universal wastes. In addition, add new management standards for universal waste electronic devices.

Proposed Regulations

Proposed regulations in California Code of Regulations, title 22, division 4.5, chapter 10 (commencing with §66260.1) and chapter 11 (commencing with §66261.1):

- Establish a list of “covered electronic devices” as defined in Public Resources Code section 42463, subdivision (f), that are presumed to be hazardous waste when discarded. The devices listed are subject to the requirements of the Electronic Waste Recycling Act of 2003, as amended, and may be managed under the alternate standards for universal waste electronic devices that will be incorporated into California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1) by these proposed regulations. The listed devices are those identified in subsection (c) of appendix X of chapter 11, as amended by the R-04-12 and R-2006-05 emergency regulations. Federal regulations do not identify electronic devices that are presumed to be hazardous waste when discarded.
- Require that the manufacturer of a listed electronic device notify retailers that the electronic device is a covered electronic device subject to the Electronic Waste Recycling Act of 2003, as amended, including the payment of the fee imposed by Public Resources Code, section 42464, pursuant to Health and Safety Code section 25214.10.1, subdivision (c), and as otherwise necessary to implement the Act.
- Provide that the manufacturer of an electronic device, who has obtained DTSC concurrence that the device, when discarded, would not be a hazardous waste, as allowed by Health and Safety Code section 25214.10.1, subdivision (e), shall not be required to manage the electronic device as a covered electronic device and shall not be subject to these regulations.
- Prohibit an electronic device, pursuant to Health and Safety Code section 25214.10, from being sold or offered for sale if the electronic device is prohibited

from being sold or offered for sale in the European Union due to the presence of certain heavy metals. Existing federal regulations do not prohibit the sale of electronic devices that are prohibited from sale or being offered for sale in the European Union.

Proposed regulations in California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1):

- Establish alternate standards for treatment of electronic devices as universal wastes, as authorized by Health and Safety Code section 25214.9, subdivision (b). These standards are similar to those adopted in emergency regulations R-03-19 and R-2006-02.
- Align state regulations with new federal regulations on management standards for universal waste mercury-containing equipment (MCE). To this end, regulations pertaining to various mercury-containing devices will be consolidated under “mercury-containing equipment.”
- Consolidate management standards for CRT material handlers and small quantity and large quantity handlers of universal waste under a single set of standards. Unlike federal regulations, state regulations will not distinguish between small and large quantity handlers except for notification requirements.
- Reformat and consolidate the chapter 23 regulations applicable to other universal waste streams for clarification and internal consistency.

Note: Existing federal universal waste regulations do not address universal waste electronic devices, including CRT devices, CRTs and CRT glass.

Minor amendments are also proposed to align these sections with the proposed amendments discussed above: California Code of Regulations, title 22, division 4.5, chapters 10 (Definitions), 11 (M-listed waste), 14 (Applicability for Permitted Facilities), and 15 (Applicability for Interim Status Facilities).

Incorporated by Reference

These regulations propose to incorporate by reference the following documents, which, because of their complexity, would be impractical to duplicate in the regulatory text:

European Union Directive 2002/95/EC, “Restriction of the use of certain hazardous substances in electrical and electronic equipment,” January 27, 2003.

European Union Directive 2005/618/EC, “Establishing the maximum concentration values for certain hazardous substances in electrical and electronic equipment,” August 18, 2005, or as amended thereafter by the Commission of European Communities.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has prepared a Notice of Exemption (NOE) which indicates no significant effect from the project on the environment. An NOE is appropriate because the proposed regulations will result in the diversion of covered electronic wastes from land disposal to recycling facilities subject to levels of regulatory controls commensurate with the potential risks to human health and safety and the environment associated with authorized recycling activities. The NOE is available for review with the rulemaking file. A copy of the draft CEQA document is posted on the DTSC Internet site at <http://www.dtsc.ca.gov>.

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

California Code of Regulations, title 22, division 4.5, section 66273.74 of this rulemaking requires that universal waste handlers who dismantle or treat any universal waste electronic devices shall, by February 1 of each calendar year, submit a report to DTSC. Such information will include: (1) the facility name and address, name and telephone number of a contact person, an identification number (if issued), the total quantity by count or weight of universal waste electronic devices and/or CRTs treated or recycled, (2) a list of businesses to which the universal waste handler shipped metal, yokes, universal wastes, and exempt materials during the previous year, and the quantities of each, (3) a list of businesses to which the universal waste handler shipped CRT glass during the previous year, and the quantities shipped, and (4) a list of CRT manufacturers or primary or secondary lead smelters to which the universal waste handler shipped CRT glass during the previous year.

In accordance with Government Code section 11346.3, subdivision (c), DTSC hereby makes a finding that such reports by businesses are necessary for the health and safety of the people of California.

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: Local agencies, acting as Certified Unified Program Agencies

(CUPAs), are responsible for inspecting many of the businesses that generate hazardous waste, universal waste being a subset of hazardous waste. CUPAs are authorized by Health and Safety Code section 25404.3 to assess fees to cover the costs of these inspections and enforcement programs. DTSC has made a preliminary determination that the proposed 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: The proposed regulations would allow state agencies to choose to recycle electronic devices as universal wastes instead of managing them as hazardous wastes. The savings to state agencies for being authorized under the proposed regulations could exceed hundreds of thousands of dollars, if state agencies currently pay hazardous waste permitting fees. As the regulations establish a list of electronic devices that are hazardous waste and any purchases of such devices to include a recycling fee (\$6 to \$10/device), state agencies will pay the advance recycling fees. However, whether a state agency actually incurs additional costs is unknown because the cost of managing the devices at end-of-life is typically decreasing as a result of implementation of the reimbursement provisions of the Electronic Waste Recycling Act.

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 funding of state agencies. The proposed regulations continue to place electronic devices in the universal waste category, which is permissible for an authorized state program operating in lieu of the federal hazardous waste management program.

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

Cost Impacts on Representative Private Persons or Businesses: DTSC 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 a preliminary 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. However, the proposed regulations may lead to some increase in the employment in the recycling of electronic devices,

which is expected to be more labor intensive than disposal operations. DTSC does not expect that the regulations will lead to the elimination of any jobs at businesses involved in hazardous waste transport or disposal.

(B) Creation of new businesses or the elimination of existing businesses within California – DTSC has made a preliminary determination that no businesses will be eliminated in California as a result of the proposed regulations. A few new businesses may be created to meet the demands for recycling services, although it is more likely that existing businesses will expand to accommodate this new demand. Businesses currently handling or disposing of electronic devices would not be eliminated because these waste streams comprise a minor share of the waste handled by these firms.

(C) Expansion of businesses currently doing business in California – DTSC has made a preliminary determination that recycling businesses in California may expand as a result of the proposed regulations. DTSC is unable to quantify the amount of this expansion.

Effect on Small Businesses: DTSC has made a preliminary determination that provisions of this rulemaking will have a positive effect on small businesses. The proposed regulations will continue to allow small businesses to avoid the high compliance costs associated with managing waste electronic devices as hazardous wastes, i.e., hazardous waste disposal costs.

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 as and less burdensome to affected private persons than the proposed action. DTSC invites 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 Ms. Laura Hayashi of DTSC's 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 Ms. Laura Hayashi 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 Ms. Ellen Haertle of DTSC at (916) 324-2437. 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 visit <http://www.calepa.ca.gov/Listservs/dtsc/> and subscribe to the "Universal Waste" Listserv. You may also 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:

Ms. Laura Hayashi, Regulations Coordinator
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Ms. Laura Hayashi's telephone number is (916) 322-6409. If Ms. Hayashi is unavailable, please contact Ms. Nicole Sotak, Senior Environmental Planner, at (916) 327-4508.