

66260.200 Classification of a Waste as Hazardous or Nonhazardous

(a)

A waste shall be classified a hazardous waste if it meets the definition of a hazardous waste in section 66261.3.

(b)

No person shall deviate from the provisions of this chapter in the management of a hazardous waste, except as provided for in section 66260.200(f) or section 66260.210.

(c)

It shall be the generator's responsibility to determine if the waste is classified as a hazardous waste pursuant to section 66260.200(a). If the generator determines that the waste is hazardous, the waste shall be managed pursuant to the provisions of this division. If the generator determines that the waste is nonhazardous, the generator, except as provided for in section 66260.200(f), may either proceed to manage the waste as nonhazardous or apply to the Department for concurrence with the nonhazardous determination through the notification procedure set forth in section 66260.200(d) before managing the waste as nonhazardous. A generator who incorrectly determines that a hazardous waste is nonhazardous and fails to manage the waste pursuant to the provisions of this division is in violation of the requirements of this division and is subject to

enforcement action.

(d)

If a person chooses to obtain departmental concurrence with the nonhazardous waste determination, a notification shall be submitted to the Department which includes all information required by section 66260.200(m). Pending concurrence by the Department pursuant to section 66260.200(e), that person shall manage the waste as hazardous waste.

(e)

The Department, within 30 days of receipt of a notification pursuant to section 66260.200(d), shall acknowledge in writing receipt of the notification. Within 60 days of receipt of a notification, the Department shall notify the sender of the notification in writing that concurrence with that person's classification of the waste as nonhazardous is approved, disapproved, or that the notification is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the sender of the notification in writing that concurrence of that person's classification of the waste as nonhazardous is approved or disapproved. The notification shall be considered disapproved if the sender of the notification fails to provide the additional information within 90 days from the date the information was requested. However, that person may request in writing an extension, up to 90 days, within which the information shall be submitted or the notification shall be considered disapproved.

(f)

If a person wishes to classify and manage as nonhazardous a waste which would otherwise be a non-RCRA hazardous waste because it has mitigating physical or chemical characteristics which render it insignificant as a hazard to human health

and safety, livestock and wildlife, that person shall apply to the Department for its approval to classify and manage the waste as nonhazardous. The application for approval shall include the information required by section 66260.200(m). The Department, within 30 days of receipt of the application, shall acknowledge in writing receipt of the application. Pending written approval by the Department, the applicant shall manage the waste as hazardous waste. Within 60 days of receipt of an application, the Department shall notify the applicant in writing that the application for classification and management of the waste as nonhazardous is approved, disapproved, or that the application is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the applicant in writing that the application for classification and management of the waste as nonhazardous is approved or disapproved. The application shall be considered disapproved if the applicant fails to provide the additional information in writing 90 days from the date the information was requested. However, the applicant may request, in writing, an extension up to 90 days, within which the information shall be submitted or the application shall be considered disapproved.

(g)

The Department may find that the notification submitted by a person pursuant to section 66260.200(d) or the application submitted pursuant to section 66260.200(f) is incomplete or inadequate for reasons which may include any of the following: (1) the application is not complete or there is insufficient information on which to classify the waste; or (2) the methods used in testing or analyzing the waste are not those prescribed in chapter 11 of this division, or have not been approved by the Department pursuant to section 66260.21(a) as

alternative methods; or (3) sampling and sample management were not in accord with Appendix I of chapter 11 and Table 3 of Appendix III of chapter 11; or (4) representative samples of the waste are required pursuant to section 66260.200(k) in order that the Department may independently assess the properties of the waste.

(1)

the application is not complete or there is insufficient information on which to classify the waste; or

(2)

the methods used in testing or analyzing the waste are not those prescribed in chapter 11 of this division, or have not been approved by the Department pursuant to section 66260.21(a) as alternative methods; or

(3)

sampling and sample management were not in accord with Appendix I of chapter 11 and Table 3 of Appendix III of chapter 11; or

(4)

representative samples of the waste are required pursuant to section 66260.200(k) in order that the Department may independently assess the properties of the waste.

(h)

If the Department disapproves of a person's determination that a waste is nonhazardous or a person's application to manage as nonhazardous a waste which would otherwise be a non-RCRA hazardous waste, the Department shall give in writing the reason for the disapproval.

(i)

If the Department at any time finds that the information submitted or generated for a determination pursuant to section 66260.200(c), a concurrence pursuant to

section 66260.200(d) or an approval pursuant to 66260.200(f) was erroneous for any of the following reasons, the Department may notify that person in writing of the deficiencies: (1) the results given in the laboratory report or other submitted data demonstrate that the waste is hazardous pursuant to the criteria given in chapter 11 of this division; or (2) fraudulently derived information is utilized or included; or (3) analysis or testing of the waste performed by the Department or other agencies or information available to the Department demonstrates that the waste is hazardous according to the criteria given in chapter 11 of this division.

(1)

the results given in the laboratory report or other submitted data demonstrate that the waste is hazardous pursuant to the criteria given in chapter 11 of this division; or

(2)

fraudulently derived information is utilized or included; or

(3)

analysis or testing of the waste performed by the Department or other agencies or information available to the Department demonstrates that the waste is hazardous according to the criteria given in chapter 11 of this division.

(j)

A person, upon receipt of such notice under section 66260.200(i), shall immediately cease managing the subject waste as a nonhazardous waste and shall manage the waste as hazardous waste. That person may submit to the Department an amended notification or application. Within 30 days of receipt of an amended notification or application, the Department shall acknowledge in writing receipt of the amended notification or application. Within 60 days of receipt of an amended notification or application, the Department shall notify the sender of the notification or the applicant in writing that the notification or application is

approved, disapproved, or that the notification or application is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the sender of the notification or the applicant in writing that the notification or application is approved or disapproved. The notification or application shall be considered disapproved if the additional information is not provided within 90 days from the date the information was requested. However, the sender of the notification or the applicant may request in writing an extension, up to 90 days, within which the information shall be submitted or the notification or application shall be considered disapproved.

(k)

Not later than 60 days after receipt of an adequate notification or application under section 66260.200(d) or (f), the Department may request representative samples of wastes. The sender of the notification or the applicant shall maintain representative samples for that period of time. The quantity of sample submitted shall be adequate to conduct verification tests. Samples shall be collected, packaged, transported and stored in accordance with the sample management procedures in "Test Methods for Evaluating Solid Waste, Physical and Chemical Methods" (SW-846), Third Edition, incorporated by reference in section 66260.11.

(l)

If the waste changes so that the prior notification or application as nonhazardous no longer adequately assesses the waste by the criteria which may render it hazardous, the waste shall be managed as hazardous.

(m)

A person seeking Department concurrence with a nonhazardous determination or approval to classify and manage as nonhazardous a waste which would otherwise

be a non-RCRA hazardous waste shall supply the following information to the Department: (1) name, mailing and billing address, location, contact person and phone number for the generating facility; (2) A description of the waste including a physical description, quantities produced per unit time, a detailed description of the generating process and current waste disposal method; (3) information on the sampling of the waste including the name and address of the firm sampling the waste, the name(s) of the person(s) sampling the waste, dates and locations of sample collection and a description of the sampling methodology and sample handling and preservation procedures; (4) testing laboratory information including the name, address, and certification number of the testing laboratory, the test methods used and references for locating these methods, the name(s) and qualifications of the person(s) testing the waste, the method for preparation of laboratory samples from field samples and information needed to identify each sample; (5) laboratory results including results from all tests required by chapter 11 of this division and a listing of the waste's constituents. Results shall include analyses from a minimum of four representative samples as specified in chapter 9 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, 3rd Edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference in section 66260.11 of this chapter); (6) certification of the veracity of the information submitted, signed and dated by a person who is the responsible manager of the facility.

(1)

name, mailing and billing address, location, contact person and phone number for the generating facility;

(2)

A description of the waste including a physical description, quantities produced per unit

time, a detailed description of the generating process and current waste disposal method;

(3)

information on the sampling of the waste including the name and address of the firm sampling the waste, the name(s) of the person(s) sampling the waste, dates and locations of sample collection and a description of the sampling methodology and sample handling and preservation procedures;

(4)

testing laboratory information including the name, address, and certification number of the testing laboratory, the test methods used and references for locating these methods, the name(s) and qualifications of the person(s) testing the waste, the method for preparation of laboratory samples from field samples and information needed to identify each sample;

(5)

laboratory results including results from all tests required by chapter 11 of this division and a listing of the waste's constituents. Results shall include analyses from a minimum of four representative samples as specified in chapter 9 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, 3rd Edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference in section 66260.11 of this chapter);

(6)

certification of the veracity of the information submitted, signed and dated by a person who is the responsible manager of the facility.

(n)

Notwithstanding the time frames specified above, the Department shall not notify the applicant of the Department's decision regarding a notification submitted

pursuant to subsection (d) of this section or an application submitted pursuant to subsection (f) of this section until the California Board of Equalization receives the fee assessed pursuant to Health and Safety Code section 25205.8.