

66261.2 Definition of Waste

(a)

"Waste" means any discarded material of any form (for example, liquid, semi-solid, solid or gaseous) that is not excluded by section 66261.4(a) or section 66261.4(e) or that is not excluded by Health and Safety Code section 25143.2(b) or Health and Safety Code section 25143.2(d).

(b)

A discarded material is any material which is any of the following: (1) relinquished as explained in subsection (c) of this section; or (2) recycled, as explained in subsection (d) of this section; or (3) considered inherently waste-like, as explained in paragraph (e) of this section.

(1)

relinquished as explained in subsection (c) of this section; or

(2)

recycled, as explained in subsection (d) of this section; or

(3)

considered inherently waste-like, as explained in paragraph (e) of this section.

(c)

A material is a waste if it is relinquished by being any of the following: (1) disposed of; (2) burned or incinerated; (3) accumulated, stored or treated, but not recycled, before or in lieu of, being relinquished by being disposed of, burned or

incinerated.

(1)

disposed of;

(2)

burned or incinerated;

(3)

accumulated, stored or treated, but not recycled, before or in lieu of, being relinquished by being disposed of, burned or incinerated.

(d)

A material is a waste if it is recycled, or accumulated, stored or treated before recycling, by being managed:(1) through being used in a manner constituting disposal:(A) materials noted with an "*" in column 1 of Table I are wastes when they are: 1. applied to or placed on the land in a manner that constitutes disposal; or 2. used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself is a waste); (B) however, commercial chemical materials listed in section 66261.33, which are discarded commercial chemical products, off-specification species, container residues, or spill residues thereof, and which are applied to the land and application to the land is their ordinary manner of use are non-RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10; (2) through being burned for energy recovery: (A) materials noted with an "*" in column 2 of Table 1 are wastes when they are: 1. burned to recover energy; 2. used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself is a waste); (B)

however, commercial chemical materials listed in section 66261.33, which are discarded commercial chemical products, off-specification species, container residues, or spill residues thereof, and which are fuels are non-RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10 (3) through being reclaimed: materials noted with an "*" or "**" in column 3 of Table 1 are wastes when reclaimed; (4) through being accumulated speculatively: materials noted with an "*" or "**" in column 4 of Table 1 are wastes when accumulated speculatively.

TABLE 1	Column Use
Constituting Disposal 66261.2(d)(1)	(1) Energy Recovery/Fuel 66261.2(d)(2)
(2) Reclamation 66261.2(d)(3)	(3) Speculative Accumulation 66261.2(d)(4)
(4) Spent Materials****	Sludges (listed in section 66261.31 or 66261.32)****
Sludges exhibiting a characteristic of hazardous waste*****	By-products (listed in section 66261.31 or 66261.32)****
By-products exhibiting a characteristic of hazardous waste*****	Commercial chemical products (listed in section 66261.33)*****

Note: The terms "spent materials," "sludges," and "by-products" are defined in section 66260.10. _____ * Except as provided in sections 66261.2(d)(1)(B) and 66261.2(d)(2)(B), a material designated by a single asterisk in Column (1), (2), (3), or (4) is a waste which is not eligible to be classified as a non-RCRA hazardous waste. ** Unless exempt pursuant to Health and Safety Code section 25143.2(d), a material designated with a double asterisk in Column (3) or (4) which is identified as a hazardous waste pursuant to section 66261.3 is a non-RCRA hazardous waste. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable

materials" in section 66260.10.

(1)

through being used in a manner constituting disposal: (A) materials noted with an "*" in column 1 of Table I are wastes when they are: 1. applied to or placed on the land in a manner that constitutes disposal; or 2. used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself is a waste); (B) however, commercial chemical materials listed in section 66261.33, which are discarded commercial chemical products, off-specification species, container residues, or spill residues thereof, and which are applied to the land and application to the land is their ordinary manner of use are non-RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10;

(A)

materials noted with an "*" in column 1 of Table I are wastes when they are: 1. applied to or placed on the land in a manner that constitutes disposal; or 2. used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself is a waste);

1.

applied to or placed on the land in a manner that constitutes disposal; or

2.

used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself is a waste);

(B)

however, commercial chemical materials listed in section 66261.33, which are discarded

commercial chemical products, off-specification species, container residues, or spill residues thereof, and which are applied to the land and application to the land is their ordinary manner of use are non-RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10;

(2)

through being burned for energy recovery: (A) materials noted with an "*" in column 2 of Table 1 are wastes when they are: 1. burned to recover energy; 2. used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself is a waste); (B) however, commercial chemical materials listed in section 66261.33, which are discarded commercial chemical products, off-specification species, container residues, or spill residues thereof, and which are fuels are non-RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10

(A)

materials noted with an "*" in column 2 of Table 1 are wastes when they are: 1. burned to recover energy; 2. used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself is a waste);

1.

burned to recover energy;

2.

used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself is a waste);

(B)

however, commercial chemical materials listed in section 66261.33, which are discarded

commercial chemical products, off-specification species, container residues, or spill residues thereof, and which are fuels are non-RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10

(3)

through being reclaimed: materials noted with an "*" or "**" in column 3 of Table 1 are wastes when reclaimed;

(4)

through being accumulated speculatively: materials noted with an "*" or "**" in column 4 of Table 1 are wastes when accumulated speculatively. TABLE 1 ColumnUse

Constituting Disposal 66261.2(d)(1) (1)Energy Recovery/Fuel 66261.2(d)(2)

(2)Reclamation 66261.2(d)(3) (3)Speculative Accumulation 66261.2(d)(4) (4) Spent

Materials**** Sludges (listed in section 66261.31 or 66261.32)**** Sludges

exhibiting a characteristic of hazardous waste***** By-products (listed in section

66261.31 or 66261.32)**** By-products exhibiting a characteristic of hazardous

waste***** Commercial chemical products (listed in section 66261.33)***** Note:

The terms "spent materials," "sludges," and "by-products" are defined in section

66260.10. _____ * Except as provided in sections 66261.2(d)(1)(B) and

66261.2(d)(2)(B), a material designated by a single asterisk in Column (1), (2), (3), or

(4) is a waste which is not eligible to be classified as a non-RCRA hazardous waste. **

Unless exempt pursuant to Health and Safety Code section 25143.2(d), a material

designated with a double asterisk in Column (3) or (4) which is identified as a hazardous

waste pursuant to section 66261.3 is a non-RCRA hazardous waste. Commercial

chemical products which are "retrograde materials" as defined in section 66260.10 are

not wastes until they become "recyclable materials" pursuant to subsection (e) of the

definition of "recyclable materials" in section 66260.10.

(e)

A material is a waste if it is inherently waste-like when it is recycled. The following materials are wastes when they are recycled: (1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026 and F028. (2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in articles 3 or 4 of this chapter, except for brominated material that meets the following criteria: (A) The material must contain a bromine concentration of at least 45%; and (B) The materials must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and (C) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(1)

Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026 and F028.

(2)

Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in articles 3 or 4 of this chapter, except for brominated material that meets the following criteria: (A) The material must contain a bromine concentration of at least 45%; and (B) The materials must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and (C) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(A)

The material must contain a bromine concentration of at least 45%; and

(B)

The materials must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and

(C)

The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(f)

A material is a waste if it poses a threat to human health or the environment and meets either, or both, of the following: (1) it is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled; (2) it is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

(1)

it is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled;

(2)

it is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

(g)

Respondents in actions to enforce regulations implementing this division who claim that a certain material is not a waste or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the

material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners and operators of facilities claiming that they are recycling materials must show that they have the necessary equipment to do so.