

2006 CUPA Conference
“Ask DTSC” Questions and Answers

Disclaimer: The following questions were asked of a panel of DTSC staff both in writing prior to, and verbally during, the Thursday, February 9, 2006 CUPA Conference session. The answers offered by the panelists were based on their knowledge, experience and understandings of the statutes and regulations. They are not the official stances of the Department on all issues. Where clarifying information has been added, or where an answer has been changed, the item will be noted in italic font below the original question and answer. Questions submitted verbally, and answers provided by the panel during the session, may be different from the originally asked question or answer provided for the purposes of brevity or due to the inability to fully transcribe all conversations.

1. Since Universal Waste is a subset of hazardous waste, should the amounts of Universal Waste generated be accounted for when determining the appropriate generator status of a facility (i.e. Large Quantity Generator)?

Answer: No. While the regulations do not expressly address this issue, Title 22, CCR, section 66273.1(b) does note that the intent of the universal waste regulations was to exempt universal waste from the management standards for hazardous waste found in Title 22, CCR, Chapters 10 through 16, which would include “counting” for the purpose of determining generator status and accumulation times.

2. Waste amalgam is brought to a Household Hazardous Waste Collection Facility (HHWCF) by a business that is handling it as a universal waste.

- a. Does the HHWCF have to continue to handle this waste as a universal waste (UW)?

Answer: No. UW regulations establish an alternate set of management standards designed to promote the recycling of these wastes. Businesses are not obligated to treat these wastes as UW, and may manage them as hazardous wastes at any time in the handling process.

- b. If the HHWCF decides to handle the waste amalgam as a hazardous waste, can it then dispose of the waste since the original handler designated it as a universal waste destined for recycling?

Answer: No. While the HHWCF may handle the waste amalgam as a hazardous waste, because it was originally designed a universal waste, it must not be disposed of, but may be sent for offsite recycling.

- c. How does this apply to amalgam traps that may also be contaminated with bodily fluids such as blood?

Answer: The answer is the same for contaminated amalgam traps as for waste amalgam. The HHWCF has the discretion to accept any waste from a business. In instances such as these where an additional hazard is introduced by the presence of blood or other bodily fluids that may potentially carry pathogens, it may be in the best interest of the HHWCF to limit worker exposure and not accept these wastes. *Even though these wastes are contaminated with blood, they are not exempt from the definition of a hazardous waste. HSC section 25117.5 does allow some exemption from the definition of hazardous waste, but under the conditions stated in HSC section 117635. Blood contaminated wastes must contain fluid blood (HSC section 117635(d)) in order to be handled as biomedical wastes in lieu of hazardous wastes.*

3. What is the status of DTSC's cyanide treatment regulations?

Answer: DTSC is circulating the regulatory packet within the Department for internal review, and is expecting to send the packet to the Office of Administrative Law in late 2006.

a. Is DTSC going to delegate the authority to issue cyanide consent orders to the CUPAs?

Answer: No. DTSC is planning on adding cyanide treatment to the existing Permit by Rule tier of tiered permitting which will give UPAs the authority to authorize the treatment units, instead of the current system in which DTSC issues individual Consent Agreements that allow for treatment.

4. May waste be placed on the ground at any time, and if so for how long, at 10-day exempt transfer facilities?

Answer: Waste may be placed on the ground at an exempt transfer station during the transfer from one vehicle to another. There is no defined period of time during which containers may remain off a vehicle during transfer, but according to regulatory statements of reasons, the intent of the "vehicle to vehicle transfer" was to ensure that wastes packaged in containers remained in those containers without any bulking, mixing or repackaging in accordance with DOT requirements. DTSC is expecting to release a fact sheet on transfer facilities in early 2006.

5. Will the cyanide treatment regulations allow for the treatment of cyanide containing plating baths?

Answer: This issue is still to be determined by the Department in its rulemaking.

6. At what level is a cyanide solution considered "extremely hazardous"? What is DTSC's position on determining if a waste solution containing cyanide is an extremely hazardous waste?

Answer: The Department will not be attempting to answer this question other than to say that cyanide bearing wastes are extremely hazardous when those cyanide bearing wastes meet the criteria as an extremely hazardous waste, as set in T22, CCR, section 66261.110. The reason for the Department's reluctance in setting a threshold at or above which cyanide containing wastes are extremely hazardous is due to the wide range of effects shown by differing cyanide complexes. As an example, a solution containing only sodium cyanide may have a LD₅₀ of 6.4 mg/kg, while a solution of gold cyanide is really a complex equilibrium of gold, potassium and cyanide for which a LD₅₀ must be calculated on a concentration basis for each individual solution. Additionally, solutions will weaken over time as the concentrations of select constituents are removed from solution in the plating process, form new complexes with introduced impurities, and are chemically altered by the natural forces of equilibrium (e.g. cyanide oxidation at a water-air interface).

7. Since regulations do not require secondary containment for areas used for container storage of hazardous waste, what authorities or other tools does a UPA have to compel a business to keep a container storage area clean? The requirement to clean containment is clearly stated for tanks in secondary containment, can those requirements also be applied to secondarily contained container accumulation areas?

Answer: The rules found in T22, CCR, section 66265.196(c) which require removal of waste from secondary containment within 24 hours of detection can not be applied to container accumulation areas. In lieu of this requirement, an agency may want to look at the applicability of Title 22, CCR, section 66265.31 (for generators of 1000 kg/mo or more) or 40CFR265.31 (for generators of less than 1000 kg/mo—please see question #21 for reasoning) -maintenance of facility to minimize releases.

8. What is DTSC's position regarding the closure of a Permit by Rule tank system when the system will be transferred because of change in ownership? The system will continue to function, but under different ownership.

Answer: The Department has historically allowed for Tiered Permitting systems to be transferred between owners without full closure of the systems, calling this "delayed closure". The Department would require that a new authorization packet be submitted by the purchasing business as well as a letter of withdrawal of the existing notification by the existing business. The largest potential problem with allowing transfer of ownership without "clean closure" is the potential liabilities for any contamination found in the future. Barring full closure and investigation prior to transfer of ownership, both the selling and buying businesses are broadening their potential future liabilities as a "potentially responsible party" during site clean up because neither has defined the environmental conditions at the time of transfer.

9. Please clarify the definition of contiguous property: *(please also see two scenarios at end of the questions)*

- a. A company rents Buildings “A1”, “A2” and “A3” of a complex or campus but a different company rents building “B”. Assume that all of the buildings share a common parking lot or lots. Are these properties still contiguous? (Scenario 1)

Answer: In this scenario, the company that occupies A1, A2 and A3 may be considered a single onsite facility. The panel felt that each individual case must be examined by the local agency, and strongly suggested that if the buildings are leased that some sort of agreement be reached between the lessee and leaser regarding control of the private right of way. *The definition of “onsite facility” includes properties which may not be contiguous because a right of way (public or private) must be traveled along as opposed to crossing. This may be the case when a parking lot must be transversed (from A1 to A3 in graphic provided at end of questions). Non-contiguous properties with a common owner may be divided by a private right of way and still be considered a single onsite facility if the right of way is controlled by the owner and the public may be denied access. (Definitions can be found in T22, CCR, section 66260.10)*

- b. What if there is an alley that runs behind a single building occupied by multiple tenants? Does that change the application of contiguous? (Scenario 2)

Answer: As provided in the answer to the previous question, the answer to this question will depend on if the alley is controlled by the owner, and if the owner of the property has allowed the tenants to block access to this area. *Locations A1, A2 and A3 would not be considered contiguous, but may still be considered a single “onsite facility” if conditions are met.*

10. A company operates such that multiple buildings on one contiguous property each have obtained their own EPA ID number (generally done for the purposes of billing different divisions of departments within the company). As a result of each building having a separate EPA ID number and being considered as a uniquely regulated entity, each of these buildings is a CESQG. When taken as a whole, the company would be a LQG. Can a company do this?

Answer: The panel felt that the arrangement, for the purposes of tracking or billing, would be amenable to allowing for the issuance of different EPA ID Numbers to each building. However, for the purposes of determining the proper generator “status” and waste management regulations, the property described would meet the definition of an “onsite facility”, and as such the total amount of waste generated by all buildings should be considered. In general, the definition of a generator is tied to the definition of “onsite” and not to an EPA ID Number.

11. How are UPAs expected to meet the 5% inspection requirement for universal waste generators given the sunset of the CESQG/ household exemption?

Answer: UPAs are not expected to conduct inspections at 5% of all universal waste generators or handlers. The agreement reached between the Department and the CUPA Forum Board was that agencies would expend 5% of their hazardous waste related time in the universal waste field. This time may be expended by (but is not limited to) conducting inspections, integrating UW into existing inspections, promoting UW recycling, and/or public outreach. The CUPA evaluators are looking to see that this time is being accounted for, and how each agency is addressing the issue.

12. As an inspector, I have the authority to conduct an inspection, once granted consent. Does an inspector have the authority to inspect ALL areas of a facility, even if the business states that there are no regulated activities occurring in these areas?

Answer: The panel was unable to answer this question, but chose to defer to an attorney for clarification. *After the conference, an attorney with the Department was asked to clarify the inspection authority granted in HSC 25185. The opinion offered was that the clause in HSC 25185(a) is broad enough to be interpreted to allow an inspector to inspect all areas of a facility, even those identified by a business as not containing any hazardous waste activities if it can reasonably be believed that hazardous waste activities are taking place in that area. That being said, be aware that should a business say "no" or prevent entrance to an area that could reasonably be used for hazardous waste activities, a warrant should be obtained. The attorney pointed out that the scope of the law is broad enough to allow for full inspection, but that all decisions are discretionary and that because of civil liabilities, it is often better to allow a judge to make the determination where access is being questioned.*

13. Two independent businesses are conducting business in a shared location with shared equipment. How do you discern between the two, and do they both need EPA ID numbers for the purposes of identification?

Answer: The panel felt that as long as the arrangement does not make regulation of either business less stringent, that it would be a discretionary call by the agency as to if the two businesses should each be independently regulated.

14. There is a conflict between the Integrated Waste Management Board (IWMB) and DTSC with respect to the registration requirements for handlers and transporters of Commercial Electronic Devices. Has this been addressed? If so, how?

Answer: The panel was aware of the conflict, but was unaware of if the conflict had been resolved by the IWMB. *According to the IWMB, experience has shown that there are certain instances where a prospective collector does not necessarily qualify as a handler. In some of these instances, the prospective collector is merely a transporter of CRT materials or universal waste, even potentially based outside the borders of California. In other instances, the applicant doesn't actually take possession of the material at all, but simply arranges for the transfers from generator to recycler.*

This apparent conflict is being addressed through proposed final regulations currently being prepared for notice with the Office of Administrative Law (OAL).

The "fix" is proposed in 14 CCR 18660.12 as follows:

“(b) A collector shall maintain a physical location within the state of California at which:

(1) CEWs can be handled.

(2) All records required by this Chapter shall be maintained.”

It is anticipated that the proposed regulations will be noticed with OAL in early March, 2006. The draft language can be reviewed via the CIWMB's website at:

<http://www.ciwmb.ca.gov/Electronics/Act2003/Regulations/Proposed/Default.htm>

In the meantime, the CIWMB is evaluating its existing emergency regulations and the enabling statute to determine if the perceived conflict actually exists or if the CEW payment system can approve applicants who do not notify DTSC due to a lack of requirement to do so. For more information, contact Jeff Hunts at the IWMB at jhunts@ciwmb.ca.gov or 916-341-6603.

15. Are small spills of oil noted in parking lots regulated as releases of hazardous waste?

Answer: The panel did not think that it was within the intent of the law to regulate incidental drips of oil from vehicles as hazardous waste releases. However, the panel did agree that the cumulative effect of these drips could have a deleterious effect on the environment and should be addressed by other programs such as a storm water program.

16. A laboratory uses lab satellite accumulation, but wants to keep the satellite container in a locked cabinet located on the floor beneath the labs that generate the waste. Would this be allowed?

Answer: Maybe. The wording in the laboratory satellite accumulation statute (HSC section 25200.3.1(b)) is broad enough to allow this to occur. The statute only states that the location of the accumulation area be “as close as is practical to the location where the laboratory hazardous waste is generated”. It would be up to the lab to demonstrate why placing the container on the floor beneath the labs is “as close as practical”. The panel also noted that some of the reduced regulatory standards that apply to satellite accumulation (such as not having to conduct inspections) come with the expectation that the container is being routinely monitored by the operator in the area of the accumulation, and that by moving the container too far from the lab of generation, this may be in violation of the spirit of the law.

17. On a large contiguous property with multiple buildings, office clerks are collecting alkaline batteries in each building. Can these clerks use interdepartmental mail to move the collected batteries from the individual buildings to a central collection point in another building?

Answer: Yes, as long as the transportation of the batteries is done in accordance with DOT requirements.

18. Should universal waste batteries have their terminals taped?

Answer: No, the taping of battery terminals is not required of handlers of universal waste batteries. The panel did note that lithium batteries that have been removed prior to their being “fully” discharged do carry the potential to generate a lot of heat if their contacts do touch. In these instances, it was suggested that the batteries do have their terminals taped to reduce the risk of unanticipated discharge.

19. Do 90 day accumulation areas need to be established over an impermeable barrier such as concrete or asphalt?

Answer: No. There are no requirements in hazardous waste regulation regarding what surfaces an accumulation area must be established upon. Please be aware, however, that there may be rules regarding the storage of hazardous materials in the Fire Code which would require an impermeable barrier to be in place.

20. Does abandoned waste picked up by a city or county agency, and brought back to a corporation yard (corp yard), count against the amount of waste generated for the purposes of determining if the corp yard is a small quantity generator or a large quantity generator?

Answer: Yes and No. For the purposes of state assessed fees, the waste brought in does not count. For the purposes of determining accumulation times and applicable waste management standards, yes, waste collected from abandoned locations does count.

21. Does the requirement for a facility to maintain and operate the facility in a manner that minimizes the possibility of a fire, explosion or release apply to small quantity generators?

Answer: Yes. The regulatory references follow the following path: 66262.34(d) refers you to 40CFR 262.34(d-f). 40CFR 262.34(d)(4) refers you to subpart C of part 265 of 40CFR. Subpart C of part 265 of 40CFR contains section 265.31 (Maintenance and Operation of Facility).

22. Is bio-diesel (B100) a hazardous waste?

Answer: The Department does not have any evidence that would indicate that used B100 is a hazardous waste.

a. Can UPAs regulate bio-diesel as a hazardous material?

Answer: Yes, CUPAs may regulate Bio-diesel as a hazardous material if the CUPA has made the determination that the material meets the criteria stated in HSC, section 25501(o).

23. Can mixtures of gasoline and water generated from the maintenance of underground storage tanks be transported back to the refinery? The mixture is placarded as “flammable” during the transportation.

Answer: Gasoline-water mixtures may be returned from a fueling facility to the refinery if the mixture meets the definition of an “oil-bearing material” found in HSC, section 25144. *HSC section 25144 clearly states that contaminated groundwater from the operation, maintenance, or clean up of service stations as defined in Section 13650 of the Business and Professions Code (BPC) are NOT included in the definition of an “oil-bearing material”. Gas-water mixtures may also be permitted to be returned to the refinery under the conditions outlined in HSC, section 25143.2(d)(2)(D).*

24. Is FM 186 legal? Under what circumstances?

Answer: FM 186 is a legal product that may be used in immediate response to a release of a hazardous material or waste (as allowed by T22, CCR, section 66270.1(c)(3)(A)). FM 186 should not be used, without a permit or other authorization, for the end-of day cleaning of pads or fueling areas, nor should it be used to rinse or empty fuel filters prior to their accumulation.

a. The manufactures of FM 186 have a waste profile stating that the product is non-hazardous. Can a generator use this profile in making their determination?

Answer: A generator may use any information available in making a decision based on “generator knowledge”.

25. A strip mall has multiple businesses that generate used oil. One of the businesses has a used oil accumulation tank. Can the other businesses bring their used to the business with the tank and dump their oil in that tank? What types of recordkeeping or transportation documentation would apply?

Answer: According to HSC, section 25250.11 “any person who receives used oil from consumers or other used oil generators is exempt from hazardous waste facilities permit requirements...” if conditions are met. *There are not any specific types of recordkeeping or transportation documentation required by hazardous waste statute or regulation. It is strongly suggested that businesses keep a log of the dates, quantities and locations of used oil disposal be they another business’s tank, a certified collection center or a HHW Collection Facility.*

26. If absorbent is applied to a spill of used oil and when swept up tested and found not to be hazardous (due to its characteristics), can it still be considered a hazardous waste due to the mixture rule?

Answer: To determine if the waste is subject to the rule, you must first examine the used oil rules in 40 CFR, part 279 and Health and Safety Code, section 25250.1. If the mixture is not free flowing, then it does not meet the definition of “used oil” and would not be subject to the mixture rule. If the definition of used oil is not strictly applied, the waste must be characterized according to the standards in 66261.3 et seq.

27. A large tank containing used oil (a non-RCRA hazardous waste) is pumped out every 90 days. The oil is shipped as a recyclable material under a bill of lading after it is determined to have met the “standards of purity” found in California Health and Safety Code. The tank’s design is such that a portion of the oil can not be removed from the tank during each pumping episode. What are the requirements for the liquid left in that tank?

Answer: As long as it can be demonstrated that the tank is being used neither the tank nor its contents are subject to hazardous waste standards.

a. Does the tank need to be marked as empty?

Answer: No. There are no requirements to mark tanks as ‘empty’.

b. Does the tank need to be manually pumped to ensure that all oil is removed?

Answer: Not so long as it can be demonstrated that the tank is being used.

c. If oil remains, does the tank need to be labeled as a hazardous waste tank?

Answer: No.

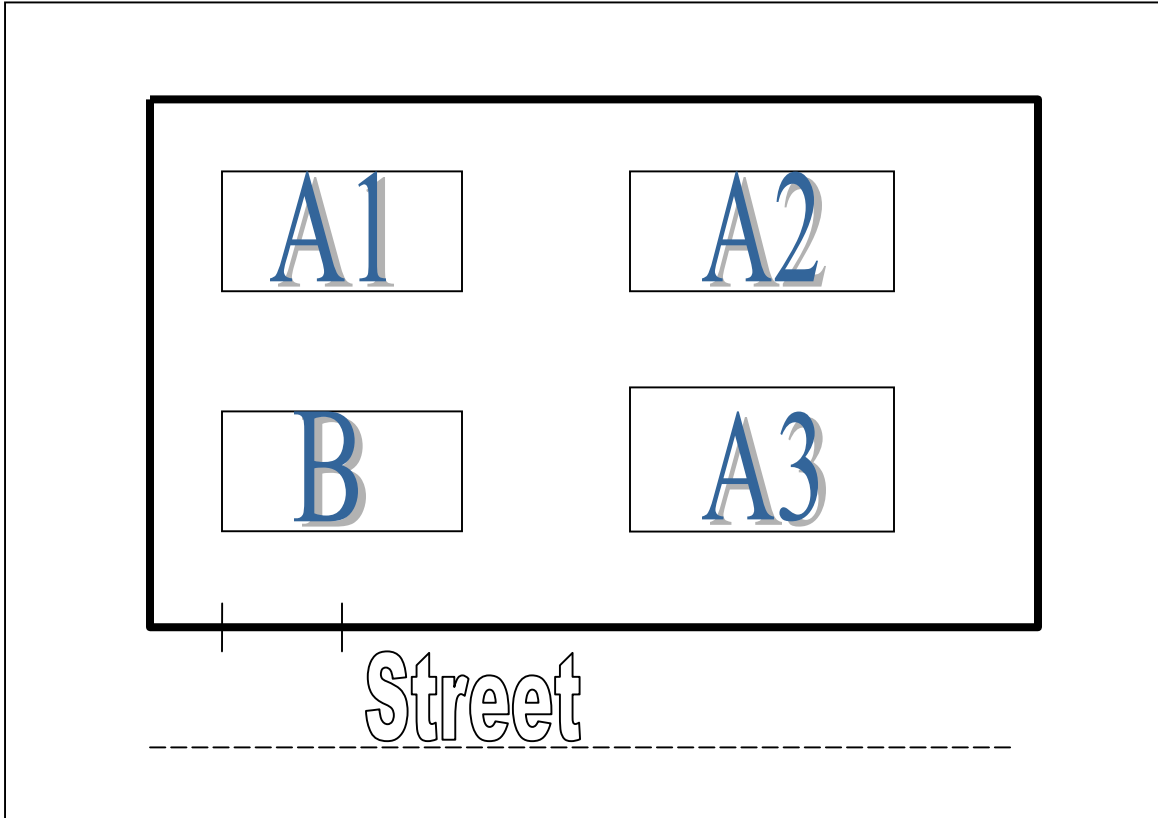
28. When is a CRT a waste? What if the CRT is indicated to have a potential use?

Answer: CRTs are wastes when it can no longer be demonstrated that they will be used. The potential for use is not enough to meet this standard. If the CRT has a potential use, it should be directed to that use.

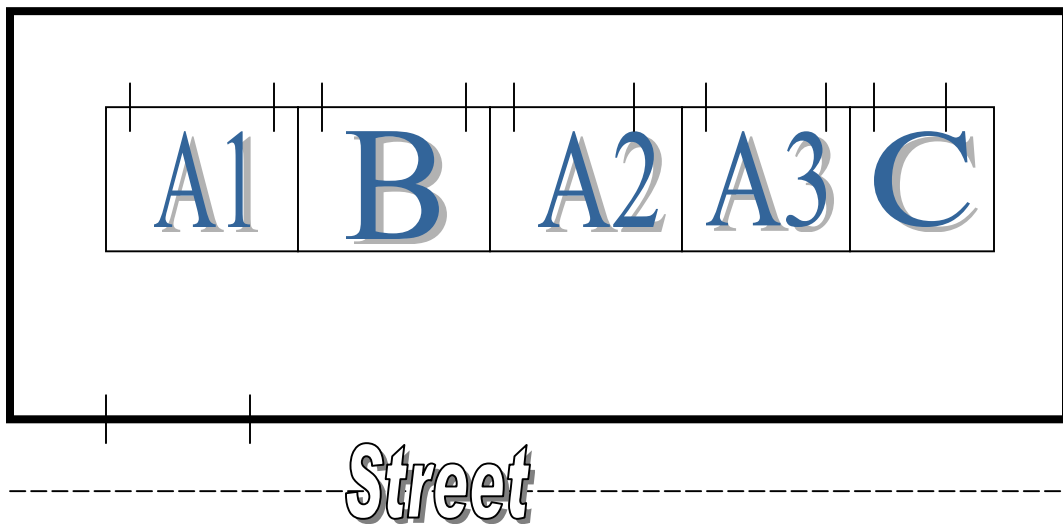
29. What are the requirements that would require a business to prepare and submit a Biennial Report? The guidance seems to indicate that all Large Quantity Generators and/or facilities that treat/store RCRA hazardous waste are required to file. We are a transfer station that stores approximately 100-150 pounds of HHW each month.

Answer: The Biennial Report is a Federally-required report that is required of all large quantity generators of RCRA hazardous wastes. The report is also required for those businesses that have a permit to treat or store these wastes. The permit requirement for treatment should not be confused with a “Tiered Permit” (PBR, CA or CE). The permit requirement for storage refers only to storage of wastes beyond the allowable accumulation times stated in 66262.34 (rules for generators). With respect to a transfer facility that generates 150 pounds of hazardous waste each month, the Biennial Report requirements would probably not apply since 150 pounds of waste is well below the 1000 kg/mo limit needed to be considered a Large Quantity Generator. One caveat to consider— if the facility handles more than 1 kg of acutely hazardous wastes, a Biennial Report must be filed. The definition of acutely hazardous wastes can be found in

40 CFR section 261.33(e). Specific questions regarding Biennial Reporting can also be submitted to brsstaff@dtsc.ca.gov.



Scenario 1



Scenario 2