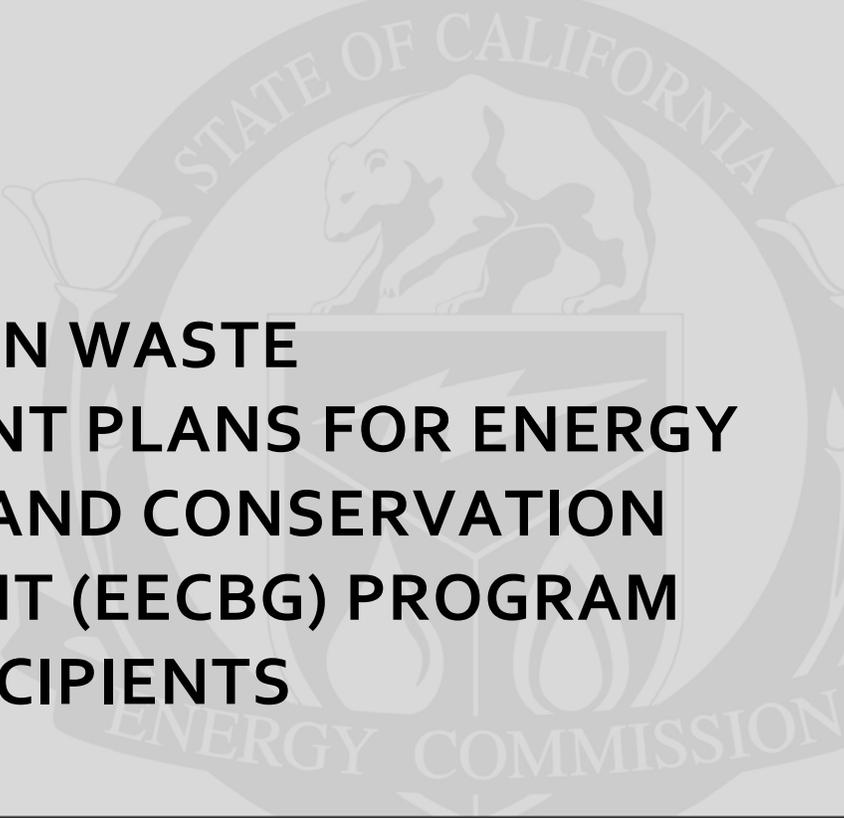


**California Energy Commission  
GUIDANCE**



**GUIDANCE ON WASTE  
MANAGEMENT PLANS FOR ENERGY  
EFFICIENCY AND CONSERVATION  
BLOCK GRANT (EECBG) PROGRAM  
FUNDING RECIPIENTS**

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# CALIFORNIA ENERGY COMMISSION

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## GUIDANCE ON WASTE MANAGEMENT PLANS FOR ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) PROGRAM FUNDING RECIPIENTS

The United States Department of Energy (DOE) requires that the California Energy Commission (Energy Commission) obtain waste management plans for each proposed project receiving funding under the Energy Efficiency and Conservation Block Grant (EECBG) Program prior to any proposed project activities generating waste. DOE requires waste management plans to minimally contain the following information for each category of waste that the project proponent anticipates will be generated by its proposed project activities: the estimated amount of waste to be generated, expressed in either volume or weight, and the disposal path for each category of waste. The Energy Commission is providing the following guidance to assist recipients of EECBG Program funding with fulfilling this requirement.

This document presents an overview of laws and regulations that govern waste management which may apply to recipients of EECBG Program funding. Although this summary is intended to be comprehensive, it does not include all the waste management requirements that may apply to individual projects and particular categories of waste. Recipients are responsible for ensuring that they are in compliance with all federal, state, and local laws and regulations governing the management of wastes generated by their project activities under the EECBG Program, including compliance with laws and regulations that are not referenced in this document.

This document is intended to be used in conjunction with the accompanying Certification and Compliance Form. Each recipient of EECBG Program funding must complete and submit the Certification and Compliance Form to the Energy Commission to fulfill the waste management plan requirement.

### **1. Federal and California Requirements for the Management<sup>1</sup> of Hazardous Waste**

#### **A. Hazardous Waste Determination**

The process of determining if a waste is regulated as a hazardous waste is called the Hazardous Waste Determination.

##### **i. Hazardous Waste Determination Under Federal Law**

The Resource Conservation and Recovery Act (RCRA)<sup>2</sup> gives the United States Environmental Protection Agency (EPA) the authority to control hazardous waste from the “cradle-to-grave.”<sup>3</sup> This includes the generation, transportation, treatment, storage, and

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1 See 22 C.C.R. 66260.10 (defining “[m]anagement” or “hazardous waste management” as “the handling, storage, transportation, processing, treatment, recovery, recycling, transfer and disposal of hazardous waste.”). The term “management” is used throughout this document as that term is defined in Section 66260.10.

2 42 U.S.C. § 6901 *et seq.* (1976).

3 See United State Environmental Protection Agency, Summary of the Resource Conservation and Recovery Act, available at <http://www.epa.gov/lawsregs/laws/rcra.html>.

disposal of hazardous waste.<sup>4</sup> To be considered a hazardous waste by EPA, a material must first be classified as a solid waste.<sup>5</sup> EPA defines solid waste as garbage, refuse, sludge, or other discarded material (including solids, semisolids, liquids, and contained gaseous materials).<sup>6</sup> A person who generates a solid waste must follow the Hazardous Waste Determination procedure identified in 40 Code of Federal Regulations Section 262.11. EPA defines a waste as hazardous if it is specifically named on one of four lists,<sup>7</sup> or if it exhibits one of four characteristics of a hazardous waste: ignitability (can catch on fire), corrosivity (acidic or alkaline), reactivity (can explode), or toxicity (poisonous).<sup>8</sup> Further, EPA has designated certain hazardous wastes as acute hazardous wastes.<sup>9</sup>

RCRA allows states to enact their own hazardous waste laws, which must be as stringent as federal law.<sup>10</sup> The requirements under California law for classification of hazardous waste are more stringent than the federal criteria.<sup>11</sup> Wastes that are not considered hazardous under the federal criteria but are considered hazardous under California law are called “non-RCRA” or “California-only” hazardous wastes.<sup>12</sup> For example, asbestos is a common California-only hazardous waste.<sup>13</sup>

## ii. Hazardous Waste Determination Under California Law

In California, generators<sup>14</sup> of hazardous waste must follow the Hazardous Waste Determination procedure identified in 22 California Code of Regulations Section 66262.11.

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<sup>4</sup> *Id.*

<sup>5</sup> 40 C.F.R. § 261.2.

<sup>6</sup> *Id.*

<sup>7</sup> Title 40 Code of Federal Regulations, Chapter 1, Subchapter I, Part 261, Subpart D (identifying lists of hazardous waste by category). Under EPA regulations, specific wastes that are considered hazardous are organized into four categories. The F-list (non-specific sources) identifies wastes from many common manufacturing and industrial processes, such as solvents that have been used for cleaning or degreasing. 40 C.F.R. § 261.31. The K-list (source-specific wastes) includes certain wastes from specific industries, such as petroleum refining or pesticide manufacturing. *Id.* § 261.32. The P-list and U-list (discarded commercial chemical products) include industrial chemicals, pesticides, and pharmaceuticals that become hazardous when discarded. *Id.* § 261.33.

<sup>8</sup> Title 40 Code of Federal Regulations, Chapter 1, Subchapter I, Part 261, Subpart C (identifying characteristics of hazardous waste).

<sup>9</sup> 40 C.F.R. § 261.11(a)(2) (A waste is classified as an acute hazardous waste if it is a discarded commercial chemical product on the “P-list,” as provided at 40 Code of Federal Regulations Section 261.33, or one of six specified wastes from certain industrial or manufacturing processes identified on the “F-list,” as provided at 40 Code of Federal Regulation Section 261.31).

<sup>10</sup> EPA Identification Numbers for Generators, Fact Sheet, November 2007, Department of Toxic Substances Control, California Environmental Protection Agency, page 1, available at [http://www.dtsc.ca.gov/PublicationsForms/upload/OAD\\_EPA\\_ID\\_FS.pdf](http://www.dtsc.ca.gov/PublicationsForms/upload/OAD_EPA_ID_FS.pdf) (referred to below as “EPA Identification Numbers”).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 22 C.C.R. § 66260.10 (defining “generator” as “any person, by site, whose act or process produces hazardous waste identified or listed in chapter 11 of [Title 22 California Code of Regulations, Division 4.5] or whose act first causes a hazardous waste to become subject to regulation.”). The term “generator” is used throughout this document as that term is defined in Section 66260.10.

Similar to the federal procedure, generators must determine if their wastes appear on one of five lists,<sup>15</sup> or if they exhibit one of the four characteristics of a hazardous waste: ignitability, corrosivity, reactivity, or toxicity.<sup>16</sup> California law adopts the four lists of RCRA hazardous wastes referenced above.<sup>17</sup> In addition, California law establishes a fifth list of hazardous wastes for mercury-containing products that are considered hazardous when discarded, such as fluorescent lamps and mercury switches.<sup>18</sup>

### iii. Exemptions From Hazardous Waste Regulations

The hazardous waste determination procedure also enables generators to determine whether their waste is excluded or exempted from certain hazardous waste regulations.<sup>19</sup> For example, Title 22 California Code of Regulations, Division 4.5, Chapter 42, specifies requirements for the management of fluorescent light ballasts that contain polychlorinated biphenyls (PCBs) and provides exemptions from the generally applicable waste management standards for hazardous waste found in Division 4.5, as explained in more detail below.<sup>20</sup>

## B. Specific Requirements for Generators of Hazardous Waste

### i. EPA Identification Numbers

A generator may not treat, store, dispose of, transport, or offer for transportation, hazardous waste without receiving an EPA Identification Number (EPA ID Number).<sup>21</sup> An EPA ID Number may be issued by either the U.S. Environmental Protection Agency (EPA) or by the California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control (DTSC).<sup>22</sup> EPA ID Numbers identify each handler of hazardous waste on

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15 See Defining Hazardous Waste, California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control (DTSC), February 9, 2007, available at [http://www.dtsc.ca.gov/HazardousWaste/upload/HWMP\\_DefiningHW11.pdf](http://www.dtsc.ca.gov/HazardousWaste/upload/HWMP_DefiningHW11.pdf) (referred below as “Defining Hazardous Waste”).

16 See 22 C.C.R. §§ 66261.21-66261.24 (defining the four characteristics of hazardous wastes). See also Defining Hazardous Waste, *supra* note 15.

17 22 C.C.R. § 66261.30.

18 22 C.C.R. § 66261.50. See

[http://www.dtsc.ca.gov/HazardousWaste/Mercury/index.cfm#Types\\_of\\_Mercury\\_Products](http://www.dtsc.ca.gov/HazardousWaste/Mercury/index.cfm#Types_of_Mercury_Products) (the link is broken – please paste website address into browser).

19 See 40 C.F.R. § 262.11(a) (providing that generators should determine if the waste is excluded from regulation under 40 C.F.R. § 261.4). Defining Hazardous Waste, *supra* note 15 (stating that generators should always follow the Hazardous Waste Determination procedure provided in 22 California Code of Regulations Section 66262.11 to determine if a waste is excluded or exempted from regulation).

20 See *infra* note 71 and accompanying text.

21 40 C.F.R. § 262.12(a) (“A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.”). 22 C.C.R. § 66262.12(a) (excluding limited exception, “a generator shall not treat, store, dispose of, transport or offer for transportation, hazardous waste without having received an Identification Number”).

22 EPA Identification Numbers, *supra* note 10, at 1. 22 C.C.R. § 66262.12(b) (“A generator who has not received an Identification Number may obtain one by applying to the Administrator or to the Department using EPA form 8700-12.”).

hazardous waste manifests and other paperwork.<sup>23</sup> The EPA ID Number enables regulators to track the waste from its origin to its final disposal.<sup>24</sup> EPA ID Numbers for generators are site-specific.<sup>25</sup> Thus, businesses that generate waste at multiple addresses that are not physically connected (contiguous) need a separate EPA ID number for each address.<sup>26</sup>

**a) U.S. EPA ID Numbers**

Any person who generates more than 1 kilogram of RCRA acute hazardous waste per month or more than 100 kilograms of other RCRA hazardous waste per month, must get a U.S. EPA ID Number (also known as RCRA ID Number).<sup>27</sup> In California, handlers of hazardous waste that need a U.S. EPA ID Number must send a “Notification of Regulated Waste Activity”, Form 8700-12,<sup>28</sup> to the following address:

U.S. EPA Region 9  
RCRA Notifications (handled by contractor Tetra Tech)  
75 Hawthorne Street  
San Francisco, CA 94105

Questions concerning EPA ID Numbers and Form 8700-12 should be directed to EPA’s contractor, Tetra Tech, at (415) 495-8895.

**b) California ID Numbers**

Handlers of hazardous waste who do not need a U.S. EPA ID Number but do need a California ID Number, e.g., handlers of hazardous asbestos waste, can obtain it by submitting the “California Hazardous Waste Permanent ID Number Application,” DTSC Form 1358, by mail, email, or fax.<sup>29</sup> DTSC also issues temporary California ID Numbers to people or businesses that do not routinely generate hazardous waste.<sup>30</sup> Temporary California ID Numbers are valid for a maximum of 90 days but can be used to haul any amount of hazardous waste that has been generated at the site before and during that period.<sup>31</sup> To obtain a temporary California ID Number and/or for questions concerning California ID Numbers, contact DTSC at (800) 618-6942. (Select Option 1 on the menu provided and then select Option 3 to speak with a staff person)

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23 EPA Identification Numbers, *supra* note 10, at 1.

24 *Id.*

25 *Id.* at 2.

26 *Id.* (If you are unclear whether you operate on one site or multiple sites for purposes of obtaining EPA ID Numbers contact EPA’s contractor Tetra Tech at (415) 495-8895 or DTSC at (800) 618-6942).

27 *Id.* For more information on U.S. EPA ID Numbers see

<http://www.epa.gov/Region9/waste/epanums.html>.

28 EPA Form 8700-12 and instructions for completing it can be found at

<http://www.epa.gov/osw/inforesources/data/form8700/8700-12.pdf>.

29 EPA Identification Numbers, *supra* note 10, at 3. The DTSC Form 1358 is *available at*

[http://www.dtsc.ca.gov/HazardousWaste/upload/GISS\\_-FORM\\_1358.pdf](http://www.dtsc.ca.gov/HazardousWaste/upload/GISS_-FORM_1358.pdf). For more information on

California ID Numbers refer to the DTSC’s website at

[http://www.dtsc.ca.gov/IDManifest/ID\\_Numbers.cfm](http://www.dtsc.ca.gov/IDManifest/ID_Numbers.cfm).

30 EPA Identification Numbers, *supra* note 10, at 3.

31 *Id.*



**ii. Additional Requirements for Generators of Hazardous Waste in California<sup>32</sup>**

In addition to obtaining identification numbers, hazardous waste generators in California must prepare Uniform Hazardous Waste Manifests before transporting waste off-site,<sup>33</sup> and use only permitted treatment, storage, and disposal facilities.<sup>34</sup> In order to use out-of-state waste disposal or recycling facilities, such facilities must hold all permits that are required by the destination state. However, regardless of the ultimate destination for disposal or recycling, as long as hazardous wastes are in California they must be managed in accordance with California hazardous waste laws and regulations.

Generator standards also include requirements for record keeping, reporting, packaging, and labeling.<sup>35</sup> Further, California law requires that hazardous waste be transported by hazardous waste transporters registered by DTSC.<sup>36</sup>

**C. Laws and Regulations Governing Specific Hazardous Wastes**

The Energy Commission anticipates that project activities funded with EECBG Program funds may generate the following categories of hazardous waste: asbestos, fluorescent light ballasts containing PCBs, caulk containing PCBs, universal waste, such as fluorescent tubes and bulbs, and refrigerants, such as chlorofluorocarbons and hydro-chlorofluorocarbons, used in air-conditioning units. Thus, this section provides an overview of the laws and regulations that govern the management of these hazardous wastes in California.

**i. Asbestos**

**a) The Regulation of Asbestos**

DTSC regulates the packaging, onsite accumulation, transportation, and disposal of asbestos when it is a hazardous waste, as defined below.<sup>37</sup> EPA does not regulate asbestos as a

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<sup>32</sup> See Hazardous Generator Requirements, Fact Sheet January 2002, California Environmental Protection Agency, Department of Toxic Substances Control (providing a summary of these requirements).

<sup>33</sup> 22 C.C.R. § 66262.21(c) (“a generator shall use the Uniform Hazardous Waste Manifest, EPA Form 8700-22, and, if necessary, a Continuation Sheet, EPA Form 8700-22A, printed by a registrant in accordance with 40 Code of Federal Regulations section 262.21.”). *Id.* § 66262.21(f) (“Manifests shall be submitted to [DTSC] by any generator when the waste is generated in California or is transported to a designated facility located in California. . . . The generator manifest copy shall be mailed to: DTSC Generator Manifests, P.O. Box 400, Sacramento, CA 95812.”). More information about the hazardous waste manifest requirement is available at <http://www.dtsc.ca.gov/IDManifest/Manifests.cfm>.

<sup>34</sup> 22 C.C.R. § 66262.12.

<sup>35</sup> See 22 C.C.R. §§ 66262.40-66262.47 (providing recordkeeping and reporting requirements for generators of hazardous waste) and 22 C.C.R. §§ 66262.30-66262.35 (providing pre-transportation requirements for generators of hazardous waste, including packaging and labeling requirements).

<sup>36</sup> 22 C.C.R. § 66262.12.

<sup>37</sup> Managing Asbestos Waste, Guidance Document, June 2009, Department of Toxic Substances Control, California Environmental Protection Agency, page 1, available at

[http://www.dtsc.ca.gov/PublicationsForms/upload/OAD\\_FS\\_Asbestos1.pdf](http://www.dtsc.ca.gov/PublicationsForms/upload/OAD_FS_Asbestos1.pdf) (referred to below as “Managing Asbestos Waste”) (providing a summary of packaging, labeling, transporting and disposal

hazardous waste under RCRA; thus asbestos is considered to be a “non-RCRA” or “California-only” hazardous waste.<sup>38</sup> However various state and federal regulations address other aspects of asbestos management, such as asbestos abatement.<sup>39</sup>

A key factor governing regulation of asbestos waste disposal is whether or not the asbestos is in a “friable” form (i.e., can be reduced to a powder or dust under hand pressure when dry).<sup>40</sup> Wastes that contain only non-friable asbestos are not subject to management as hazardous wastes under state hazardous waste laws, regardless of their asbestos content.<sup>41</sup> However, wastes that contain only non-friable asbestos are still regulated under air quality management regulations.<sup>42</sup>

## **b) Classification of Asbestos as Hazardous Waste**

DTSC classifies asbestos-containing materials as hazardous waste if it is friable and contains one-percent or more asbestos as hazardous waste.<sup>43</sup> If you are uncertain whether your asbestos waste is hazardous, you must have it tested by a laboratory certified by the California Department of Health Services, Environmental Laboratory Accreditation Program.<sup>44</sup>

## **c) Specific Requirements for the Management of Asbestos Waste**

Multiple agencies enforce requirements for the management of asbestos waste.<sup>45</sup> For general questions about asbestos waste management in California contact DTSC Regulatory Officers at (800) 728-6942.<sup>46</sup>

### **1. NESHAP Rules**

Asbestos is an airborne hazard, so the rules and regulations that describe the proper handling and packaging of asbestos are found in federal and state air quality regulations.<sup>47</sup>

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requirements for waste containing asbestos that is classified as hazardous by DTSC) (DTSC regulations governing asbestos are found in California Code of Regulations, Title 22, Division 4.5).

<sup>38</sup> *Id.* at 1-2.

<sup>39</sup> *Id.* at 2. What is Asbestos?, Regulatory Assistance Officers Fact Sheet, July 2003, Department of Toxic Substances Control, California Environmental Protection Agency, page 3, available at [http://www.dtsc.ca.gov/HazardousWaste/upload/OAD\\_FS\\_Asbestos.pdf](http://www.dtsc.ca.gov/HazardousWaste/upload/OAD_FS_Asbestos.pdf) (referred to below as “What is Asbestos?”) (A further example is worker exposure to asbestos, which, as a general matter, is regulated by the Federal Occupational Safety and Health Administration (OSHA) and its California State counterpart, Cal/OSHA).

<sup>40</sup> What is Asbestos?, *supra* note 39, at 3.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Managing Asbestos Waste, *supra* note 37, at 1.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *See id.* at 2-5 (providing a summary of federal and California requirements for the management and disposal of asbestos waste).

<sup>46</sup> What is Asbestos?, *supra* note 39, at 3 (DTSC Regulatory Assistance Officers provide informal guidance regarding the management of hazardous waste for the convenience of the public. Such advice is not binding upon DTSC, nor does it have the force of law. If you would like a formal opinion on a matter by DTSC, please contact the responsible program office directly.).

More specifically, atmospheric emissions of asbestos are regulated under the Federal National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 Code of Federal Regulations Sections 61.140 through 61.157.<sup>48</sup> For example, these regulations require generators to wet asbestos materials prior to packaging and use sealed, leak-tight containers, or for materials that will not fit into containers without additional breakage, to use leak-tight wrapping.<sup>49</sup> EPA is charged with NESHAP compliance monitoring for asbestos demolition and renovation.<sup>50</sup> For information on NESHAP compliance contact Bob Trotter at U.S. EPA at (415) 972-3989.<sup>51</sup>

Further, many local air pollution control districts and air quality management districts have authority to enforce the NESHAP Rules, including the requirements pertaining to asbestos.<sup>52</sup> Generators of asbestos waste should consult with their local air pollution control district or air quality management district to see if there are additional packaging or notification requirements for their region.<sup>53</sup>

## 2. TSCA

In addition to complying with NESHAP Rules, generators of asbestos waste must also comply with requirements governing the management of asbestos waste under the Toxic Substances Control Act of 1976 (TSCA).<sup>54</sup> TSCA addresses the production, importation, use, and disposal of specific chemicals including asbestos, PCBs, radon and lead-based paint.<sup>55</sup>

## 3. Disposal of Asbestos Waste in Landfills

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47 Managing Asbestos Waste, *supra* note 37, at 2.

48 See Technology Transfer Network Air Toxics Web Site, Rules and Implementation, United States Environmental Protection Agency, available at <http://www.epa.gov/ttn/atw/eparules.html>.

49 40 C.F.R. § 61.150(a)(1)(iii).

50 Compliance Monitoring, Asbestos Demolition and Renovation Compliance Monitoring, United States Environmental Protection Agency, available at <http://www.epa.gov/compliance/monitoring/programs/caa/asbestos.html> (stating that EPA, state and local air program inspectors inspect renovation and demolition sites to determine compliance with the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP)).

51 Managing Asbestos Waste, *supra* note 37, at 5.

52 *Id.*

53 *Id.* (air pollution control districts and air quality management districts with authority to enforce the NESHAP Rules have special notification requirements when asbestos demolition or renovation operations are undertaken. Some of these agencies charge a fee. Check for “Local Air District” in the “Local Contacts” list on the DTSC website, which is available at [http://www.dtsc.ca.gov/InformationResources/local\\_contacts.cfm](http://www.dtsc.ca.gov/InformationResources/local_contacts.cfm)).

54 15 U.S.C. § 2601 *et seq.* (1976).

55 Summary of the Toxic Substances Control Act, United States Environmental Protection Agency, available at <http://www.epa.gov/lawsregs/laws/tsca.html>. See also Asbestos Laws and Regulations, United States Environmental Protection Agency, available at <http://www.epa.gov/asbestos/pubs/asbreg.html> (providing links to applicable sections of TSCA).

Further, in 1986 the Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. § 2641 *et seq.*, was signed into law as Title II of TSCA to provide for the establishment of federal regulations governing the inspection and remediation of asbestos containing materials in the nation’s schools. 15 U.S.C. § 2641(b)(1).

Moreover, a landfill must be authorized to accept asbestos wastes by its Regional Water Quality Control Board.<sup>56</sup> Generators of asbestos waste should consult with their Regional Boards as they may be able to provide a list of authorized landfills in the area.<sup>57</sup>

**ii. Polychlorinated Biphenyls (PCBs)**

**a) The Regulation of PCBs**

The manufacture, use, storage and disposal of PCBs and products containing PCBs are regulated by EPA under TSCA.<sup>58</sup> PCB wastes are also regulated as hazardous wastes by DTSC under Title 22, California Code of Regulations, Section 66261.24.<sup>59</sup>

**b) Fluorescent Light Ballasts Containing PCBs**

**1. Background**

Prior to 1978 fluorescent light ballasts – electronic components generally located at the end of fluorescent light fixtures under a metal overplate – were commonly manufactured with PCBs in the capacitor oil and in a tar-like substance that surrounds ballast components known as potting compound.<sup>60</sup> Many of these PCB-ballasts are still working far beyond their intended life.<sup>61</sup> As PCB ballasts age, the chemicals may leak out and create a potential health and environmental hazard.<sup>62</sup>

**2. Regulation Under TSCA**

Under TSCA the disposal options for fluorescent lights ballasts that contain PCBs depend on whether the PCBs are found in an intact and non-leaking PCB small capacitor, a non-intact or leaking PCB small capacitor, or in the potting compound.<sup>63</sup> More specifically, ballasts that contain PCBs only in intact and non-leaking PCB small capacitors can be disposed of in a state-approved solid waste landfill, regardless of date of manufacture or PCB concentration.<sup>64</sup> There are no storage, manifesting, or notification requirements for these ballasts under TSCA.<sup>65</sup>

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<sup>56</sup> Managing Asbestos Waste, *supra* note 37, at 4.

<sup>57</sup> *Id.* (Local air quality management districts may also be able to provide this information).

<sup>58</sup> 40 C.F.R. § 761 *et seq.*

<sup>59</sup> 22 C.C.R. § 66261.24 (providing that PCB substances at certain threshold concentrations are considered toxic).

<sup>60</sup> PCB Advisory for Schools, How Voluntary Lighting Retrofits Can Address Hidden Dangers, Department of Toxic Substances Control, California Environmental Protection Agency, page 2, available at [http://www.dtsc.ca.gov/Schools/upload/SM\\_POL\\_PCB\\_Schools.pdf](http://www.dtsc.ca.gov/Schools/upload/SM_POL_PCB_Schools.pdf) (referred to below as “PCB Advisory for Schools”).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 3.

<sup>63</sup> PCB Question and Answer Manual, United States Environmental Protection Agency, January 2009, at page 41, available at <http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/qacombed.pdf> (referred to below as “PCB Question and Answer Manual”). See *id.* at 42 (providing chart that identifies the TSCA disposal requirements for fluorescent light ballasts).

<sup>64</sup> *Id.* at 45. 40 C.F.R. § 761.50(b)(2)(i).

<sup>65</sup> PCB Question and Answer Manual, *supra* note 63, at 45.

Similarly, ballasts that contain PCBs in the potting compound at low concentrations, i.e., less than 50 parts per million (ppm), and either do not contain a PCB small capacitor or contain an intact and non-leaking PCB small capacitor, may be disposed of as municipal solid waste.<sup>66</sup>

However, if the PCB concentration of the potting compound is 50 ppm or greater and the ballast does not contain a PCB small capacitor or contains an intact and non-leaking PCB small capacitor, the ballast must be disposed of as *PCB bulk product waste* using one of the following disposal options: a TSCA incinerator, a TSCA/RCRA landfill, a facility permitted, licensed, or registered by a state as a municipal or non-municipal non-hazardous waste landfill, decontamination, or an approved destruction or risk-based disposal method.<sup>67</sup> Further, depending on the disposal option utilized there may be manifesting requirements for PCB bulk product waste under TSCA.<sup>68</sup> Regardless of the PCB concentration of the potting compound, ballasts that contain non-intact or leaking capacitors must be disposed of as PCB bulk product waste using a more limited range of disposal options.<sup>69</sup>

For questions about TSCA requirements governing the management of PCB wastes contact the EPA Regional Coordinator for Region 9, Carmen Santos, at (415) 972-3360.

### 3. Regulation Under California Law

In California PCB wastes that contain a total threshold limit concentration of 50 ppm of PCBs, and/or a soluble threshold limit concentration of 5 ppm of PCBs as an oily liquid, are regulated as hazardous wastes.<sup>70</sup> Thus, generators of such PCB wastes must comply with requirements for the management of California hazardous wastes, as identified above. For questions about the management of PCB wastes in California contact DTSC Regulatory Officers at (800) 728-6942.

However, and also as noted above, Title 22, California Code of Regulations, Division 4.5, Chapter 42, provides exemptions for fluorescent light ballasts that contain PCBs from the waste management standards for hazardous waste found in Division 4.5. For example, Title 22, California Code of Regulations, Section 67426.1(a) states that a “generator of fluorescent light ballasts which contain PCBs who transports off-site no more than two fifty-five gallon drums per transportation vehicle shall be exempt” from otherwise applicable waste management requirements for hazardous waste, e.g., obtainment of an EPA ID Number, preparation of a

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<sup>66</sup> *Id.* at 93. 40 C.F.R. § 761.60(b)(2)(ii).

<sup>67</sup> PCB Question and Answer Manual, *supra* note 63, at 42, 93. See 40 C.F.R. § 761.3 (defining PCB bulk product waste as “waste derived from manufactured products containing PCBs in a non-liquid state, at any concentration where the concentration at the time of designation for disposal was  $\geq$ 50 ppm PCBs. . . . [including] Fluorescent light ballasts containing PCBs in the potting material.”).

<sup>68</sup> *Id.* at 42 (stating that manifesting is required for disposal in accordance with 40 Code of Federal Regulations Section 761.62(a) (performance-based disposal), is not required under Section 761.62(b) (disposal in solid waste landfills), and may be required under Section 761.62(c) (risk-based disposal approval)).

<sup>69</sup> *Id.* at 42, 93 (stating that ballasts containing non-intact or leaking capacitors as PCB bulk product waste must be disposed on in accordance with 40 Code of Federal Regulations Sections 761.62(a) or (c)).

<sup>70</sup> 22 C.C.R. § 66261.24.

hazardous waste manifest, and compliance with packaging, labeling, recordkeeping, reporting, and transportation requirements.<sup>71</sup>

Notably, although generators of fluorescent light ballasts that contain PCBs may be exempt from certain requirements for the management of hazardous waste under California law, they may still be subject to TSCA requirements, as explained above.

#### **4. Identification of PCB Ballasts**

All ballasts manufactured through 1978 are magnetic ballasts that contain PCBs.<sup>72</sup> Further, almost all older fluorescent light fixtures have PCB ballasts because the use of PCB-containing items was allowed to continue beyond the 1978 ban.<sup>73</sup> In fact, the supply of ballasts containing PCBs likely lasted for several years after the ban took effect.<sup>74</sup> Thus, any building built before 1980 which has not had a complete lighting retrofit is likely to contain PCB ballasts.<sup>75</sup>

Fluorescent light ballasts manufactured between July 1, 1979, and July 1, 1998, were required to be marked by the manufacturer with the statement “No PCBs.”<sup>76</sup> According to EPA it is acceptable to treat ballasts with this mark as unregulated for PCBs.<sup>77</sup> If there is no such label, EPA suggests two options: assume that the potting compound contains PCBs at 50 ppm or greater and dispose of the ballast as PCB bulk product waste in accordance with Code of Federal Regulations Section 761.62; or, test, i.e., conduct a survey of the manufacturer and type of ballasts in use in the building and develop a random sampling plan for each manufacturer and type of ballast found and analyze the samples for PCBs.<sup>78</sup> However, regardless of the results of the survey, you are responsible for the proper disposal of each ballast.<sup>79</sup>

By contrast, electronic ballasts are PCB-free and should be clearly marked as electronic.<sup>80</sup>

#### **c) PCBs in Caulk**

##### **1. Background**

EPA has learned that PCBs may be present in the caulk used in windows, door frames, masonry columns and other masonry building materials in many schools and other buildings

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71 22 C.C.R. § 67426.1(a) (“A generator of fluorescent light ballasts which contain PCBs who transports off-site no more than two fifty-five gallon drums per transportation vehicle shall be exempt from the standards set forth in Article 1, Article 2, and Article 4 of Chapter 12 of [Title 22, California Code of Regulations, Division 4.5].”).

72 PCB Advisory for Schools, *supra* note 60, at 6.

73 *Id.*

74 *Id.*

75 *Id.*

76 PCB Question and Answer Manual, *supra* note 63, at 41.

77 *Id.*

78 *Id.* at 43-44.

79 *Id.* at 44.

80 PCB Advisory for Schools, *supra* note 60, at 6.

built or renovated between 1950 and 1978.<sup>81</sup> In general, however, schools and buildings built after 1978 do not contain PCBs in caulk.<sup>82</sup>

## 2. Regulation

Caulk containing PCBs at levels of 50 ppm and greater is not authorized for use under the PCB regulations and must be removed and properly disposed of.<sup>83</sup> For purposes of disposal the caulk must be managed as PCB bulk product waste.<sup>84</sup> As noted, regulations governing the cleanup and disposal of PCB bulk product waste are provided at 40 Code of Federal Regulations Section 761.62.<sup>85</sup> It is necessary to remove all caulk that contains PCBs at concentrations of 50 ppm or greater unless a risk-based clean up and disposal alternative has been approved by EPA pursuant to 40 Code of Federal Regulations Section 761.62(c).<sup>86</sup>

Building materials such as concrete and brick that are coated with caulk containing PCBs at concentrations of 50 ppm or greater must be managed as PCB bulk product waste with the same requirements as caulk containing PCBs at those levels.<sup>87</sup> Further, surrounding building materials and soil that have been contaminated by caulk containing PCB at concentrations of 50 ppm or greater, such as through leaching, must also be cleaned up.<sup>88</sup> These materials must be treated as *PCB remediation waste*.<sup>89</sup> Regulations governing the cleanup and disposal of PCB remediation waste are provided at 40 Code of Federal Regulations Section 761.61.<sup>90</sup>

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81 Current Best Practices for PCBs in Caulk Fact Sheet - Disposal Options for PCBs in Caulk and PCB-Contaminated Soil and Building Materials, United States Environmental Protection Agency, September 2009, available at <http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulkdisposal.htm>. EPA Fact Sheet - PCBs in Caulk, United States Environmental Protection Agency, available at <http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulk-fs.pdf>. See also Facts About PCBs in Caulk, United States Environmental Protection Agency, available at <http://www.epa.gov/pcbsincaulk/guide/guide-sect1.htm> (It is important to consider when additions or renovations were constructed. Some parts of the building may have been constructed or renovated later than others. More recent additions are less likely to contain PCB caulk and contaminated dust).

82 PCBs in Caulk in Older Buildings, United States Environmental Protection Agency, available at <http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/index.htm> (referred to below as “PCBs in Caulk in Older Buildings”).

83 Current Best Practices for PCBs in Caulk Fact Sheet - Removal and Clean-Up of PCBs in Caulk and PCB-Contaminated Soil and Building Material, United States Environmental Protection Agency, September 2009, available at <http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulkremoval.htm>. See also Handling PCBs in Caulk During Renovation, United States Environmental Protection Agency, available at <http://www.epa.gov/pcbsincaulk/caulkcontractors.pdf> (the brochure provides information on the practices a contractor should consider when renovating a building that has caulk containing PCBs).

84 *Id.*

85 *Id.*

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.* See 40 C.F.R. § 761.3 (defining PCB remediation waste as “waste containing PCBs as a result of a spill, release, or other unauthorized disposal, at [certain identified] concentrations . . . . PCB remediation waste means soil, rags, and other debris generated as a result of any PCB spill cleanup, including, but not limited to . . . Buildings and other man-made structures (such as concrete floors, wood floors, or walls

For more information on PCBs in caulk contact U.S. EPA's PCBs in Caulk hotline at (888) 835-5372.

### iii. Universal Waste

#### a) Background

California's Universal Waste Rule provides reduced requirements for the handling, recycling, and transporting of certain common hazardous wastes, referred to as universal wastes.<sup>91</sup> Thus, many of the requirements for the management of hazardous waste identified above, such as the preparation of a hazardous waste manifest, do not apply to universal waste.<sup>92</sup> For information on the management of universal waste in California contact DTSC Regulatory Officers at (800) 728-6942.<sup>93</sup>

#### b) Definition

Common examples of universal wastes include televisions, computers, batteries, and fluorescent lamps.<sup>94</sup> The hazardous waste regulations identify seven categories of hazardous wastes that may be managed as universal wastes.<sup>95</sup> Any unwanted item that falls within one of these waste streams may be handled, transported and recycled following the simple requirements set forth in the universal waste regulations in Title 22 California Code of Regulations, Division 4.5, Chapter 23.<sup>96</sup>

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contaminated from a leaking PCB or PCB-Contaminated Transformer), porous surfaces, and non-porous surfaces.”).

40 C.F.R. § 761.3

90 *Id.*

<sup>91</sup> Universal Waste Fact Sheet, January 2010, Department of Toxic Substances Control, California Environmental Protection Agency, page 1, *available at*

[http://www.dtsc.ca.gov/HazardousWaste/UniversalWaste/upload/UW\\_Factsheet1.pdf](http://www.dtsc.ca.gov/HazardousWaste/UniversalWaste/upload/UW_Factsheet1.pdf) (referred to below as “Universal Waste Fact Sheet”).

<sup>92</sup> Managing Universal Waste in California, Fact Sheet, July 2008, Department of Toxic Substances Control, California Environmental Protection Agency, page 5, *available at*

<http://www.dtsc.ca.gov/HazardousWaste/UniversalWaste/upload/UniversalWfactsheetfinal.pdf>

(referred to below as “Managing Universal Waste in California”) (notably, it is still necessary to prepare proper shipping papers, such as a bill of lading).

<sup>93</sup> See also DTSC's Mercury Lamp Disposal website, available at

<http://ccelearn.csus.edu/mercurylamp/content/index.htm> (providing a succinct, user-friendly explanation of the universal waste regulations).

<sup>94</sup> *Id.* at 1. See *id.* at 2-3 (providing a comprehensive list of items that are considered universal wastes when they are no longer useful or are discarded).

<sup>95</sup> Universal Waste Fact Sheet, *supra* note 91, at 1 (citing 22 C.C.R. § 66261.9 (identifying the following seven categories: electronic devices, batteries, electric lamps, mercury-containing equipment, cathode ray tubes (CRTs), CRT glass, non-empty aerosol cans)).

<sup>96</sup> *Id.*

Notably, universal waste lamps include fluorescent tubes and bulbs, high intensity discharge lamps, sodium vapor lamps, and any other type of lamp that exhibits a characteristic of a hazardous waste.<sup>97</sup>

### **c) Regulation**

#### **1. Four Categories of Generators**

DTSC differentiates between four types of generators of universal waste: Small Quantity Handlers of Universal Waste (SQHUW), Large Quantity Handlers of Universal Waste (LQHUW), households and conditionally exempt small quantity universal waste generators (CESQUWG).<sup>98</sup>

##### **i. Small Quantity Handlers of Universal Wastes**

DTSC defines a Small Quantity Handler of Universal Waste (SQHUW) as a universal waste handler<sup>99</sup> who does not accumulate 5,000 kilograms (11,000 lbs or 5.5 tons) or more of total universal waste at any time.<sup>100</sup> Under the universal waste regulations all handlers of universal waste are subject to the waste management requirements found in California Code of Regulations Sections 66273.30 through 66273.39.<sup>101</sup> Pursuant to these provisions a handler of universal waste must comply with specific standards, e.g., provide training in proper procedures to all employees who manage universal waste, including how to respond to releases, and compliance with notification, reporting, recordkeeping, labeling, and accumulation requirements.<sup>102</sup> Small quantity handlers are subject to all of the requirements in these Sections, except that they are not required to obtain an EPA ID Number, as explained

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97 Managing Universal Waste in California, *supra* note 92, at 2 (In addition, any electric lamp that contains added mercury, whether or not it exhibits a hazardous waste characteristic, is a universal waste). See 22 C.C.R. § 66273.5 (specifying types of lamps covered pursuant to Title 22 California Code of Regulations, Division 4.5, Chapter 23).

98 Managing Universal Waste in California, *supra* note 92, at 3-5.

99 22 C.C.R. § 66273.9 (defining a universal waste handler as a generator of universal waste or the owner or operator of a facility that receives universal waste from another universal waste handler, accumulates universal waste, and sends universal waste to another universal waste handler, a facility that accepts universal waste, or a foreign country).

100 Table 1: Summary of Universal Waste (UW) Handler Requirements, Department of Toxic Substances Control, California Environmental Protection Agency, page 1, April 7, 2006, available at [http://www.dtsc.ca.gov/HazardousWaste/Mercury/upload/HWM\\_REP\\_UW\\_Requirements\\_04-07-06.pdf](http://www.dtsc.ca.gov/HazardousWaste/Mercury/upload/HWM_REP_UW_Requirements_04-07-06.pdf) (referred to below as "Summary of UW Handler Requirements") (This chart provides a helpful breakdown of applicable requirements by generator category. However, it incorrectly states that Households and Conditionally Exempt Small Quantity Universal Waste Generators are exempt from the prohibition against disposing of certain universal wastes in the regular trash). See Managing Universal Waste, *supra* note 92, at 3 (noting that exemptions that temporarily allowed people to dispose of some universal wastes in the regular trash have ended).

101 Universal Waste Fact Sheet, *supra* note 91, at 2 (providing summary of applicable requirements). See also Managing Universal Waste, *supra* note 92, at 4-5 (providing summary of applicable requirements).

102 See 22 C.C.R. §§ 66273.36 (personnel training), 66273.32 (reporting requirements for universal waste handlers), 66273.39 (requirements for tracking universal waste shipments), 66273.24 (requirements for labeling or marking universal waste), 66273.35 (accumulation time limits for universal waste).

below. According to DTSC, virtually all businesses that generate universal waste, but do not accept waste from other generators, are small quantity handlers.<sup>103</sup>

## ii. Large Quantity Handlers of Universal Wastes

DTSC defines a Large Quantity Handler of Universal Waste (LQHUV) as a universal waste handler who accumulates 5,000 kilograms or more of total universal waste at any time.<sup>104</sup> In addition to all of the generally applicable requirements for universal waste handlers, a large quantity handler must also obtain an EPA ID number before accumulating 5,000 kilograms of universal waste.<sup>105</sup> Generally, only a universal waste collection business will accumulate that much universal waste at once.<sup>106</sup>

## iii. Households and Conditionally Exempt Small Quantity Universal Waste Generators

Households and Conditionally Exempt Small Quantity Universal Waste Generators (CESQUWG) are exempt from most of the requirements of the universal waste regulations provided they comply with certain conditions.<sup>107</sup> DTSC defines a CESQUWG as a generator of universal waste who generates no more than 100 kilograms (220 pounds) of RCRA hazardous wastes, including universal wastes that are RCRA hazardous wastes, and no more than 1 kilogram (2.2 pounds) of acutely hazardous waste in any calendar month.<sup>108</sup> DTSC defines a household as a single detached residence or a single unit of a multiple residence unit.<sup>109</sup>

Pursuant to California Code of Regulations Section 66278.8, a generator who meets the definition of a CESQUWG or a household is exempt from universal waste handler requirements provided he or she:

- Does not dispose of universal waste in the regular trash;
- Relinquishes universal waste only to another universal waste handler, a universal waste transporter, a destination facility, or a curbside household hazardous waste collection program; and,
- Does not conduct treatment of universal waste, except for limited activities enumerated in the regulations (e.g., removing batteries, light bulbs, or mercury switches).<sup>110</sup>

## 2. Specific Disposal Requirements for Universal Waste

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103 Mercury Lamp Disposal, Small Quantity Handlers, Department of Toxic Substances Control, California Environmental Protection Agency, *available at* <http://ccelearn.csus.edu/mercurylamp/content/intro3.htm>.

104 Summary of UW Handler Requirements, *supra* note 100, at 1. *See* Managing Universal Waste, *supra* note 92, at 5.

105 22 C.C.R. § 66273.32(a)-(b).

106 Managing Universal Waste, *supra* note 92, at 5.

107 Universal Waste Fact Sheet, *supra* note 91, at 4.

108 *Id.* 22 C.C.R. § 66273.9.

109 Universal Waste Fact Sheet, *supra* note 91, at 4. 22 C.C.R. § 66273.9.

110 Universal Waste Fact Sheet, *supra* note 91, at 4.

Universal waste may not be sent to a municipal solid waste (garbage) landfill or to a non-hazardous waste recycling center.<sup>111</sup> Instead, all handlers of universal waste must relinquish their universal waste to one of the following:

- Another handler (typically a business that specializes in collecting, storing, accumulating and shipping universal wastes);
- A universal waste transporter;
- A universal waste destination facility (generally, a facility with a permit to treat, store, or dispose of hazardous waste).<sup>112</sup>

Further, certain universal wastes, including all universal waste lamps, must be recycled.<sup>113</sup> If these universal wastes are not recycled, then they must be disposed of in accordance with the requirements for disposal of hazardous waste explained above, e.g., notification of DTSC through the provision of a California ID Number, use of a hazardous waste manifest and a registered hazardous waste transporter.<sup>114</sup>

### 3. Special Considerations for Fluorescent Lamps

For information on the proper management, recycling, and transporting of waste mercury lamps including fluorescent tubes and many types of street lights, see the DTSC's Mercury Lamp Disposal website at <http://ccelearn.csus.edu/mercurylamp/content/index.htm>.<sup>115</sup> In California, crushing fluorescent lamps is considered treatment of hazardous waste and requires a permit from DTSC. Notably, on its Mercury Lamp Disposal website DTSC strongly cautions against the use of drumtop crushers designed to break mercury lamps into drums, stating "[t]o avoid exposing people to mercury poisoning and paying serious fines and penalties, do not use mercury lamp crushers in California."<sup>116</sup>

Further, DTSC recommends that the following considerations be taken into account when evaluating agreements with potential relamping contractors.<sup>117</sup>

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111 *Id.*

112 *Id.* at 5. See 22 C.C.R. § 66273.9 (providing definition of "Destination facility").

113 Managing Universal Waste in California, *supra* note 92, at 4 (providing the following list of universal wastes that must be recycled: cathode ray tubes (TV and computer glass); lamps; mercury thermometers; mercury switches; mercury gauges; dilators and weighted tubing; gas flow regulators; counterweights and dampers).

114 *Id.*

115 See also It is Illegal to Discard Fluorescent Light Tubes/Lamps in the Trash, Department of Toxic Substances Control, California Environmental Protection Agency, May 2007, available at [http://www.dtsc.ca.gov/HazardousWaste/Mercury/upload/HWMP\\_FS\\_Fluorescent-Tubes-Trash.pdf](http://www.dtsc.ca.gov/HazardousWaste/Mercury/upload/HWMP_FS_Fluorescent-Tubes-Trash.pdf) (providing information on recycling fluorescent tubes and bulbs). See also Fluorescent Lamps and Tubes, CalRecycle, available at <http://www.calrecycle.ca.gov/ReduceWaste/FluoresLamps/#AllLampsHaz> (providing additional information on recycling fluorescent lamps and tubes).

116 Mercury Lamp Disposal, Collection and Recycling, The Dangers of Drumtop Crushers, Department of Toxic Substances Control, California Environmental Protection Agency, available at <http://ccelearn.csus.edu/mercurylamp/content/intro3.htm>.

117 Best Management Practices for Managing Fluorescent Lamps, Department of Toxic Substances Control, California Environmental Protection Agency, January 26, 2005, page 2, available at

- Ensure that the contract specifies that the lamps will be safely managed and recycled. The contract should specify who will recycle the lamps.
- Ensure that the contract requires the use of trained employees to change and manage the spent lamps.
- Ensure that the contract requires the contractor to be prepared for cleaning up any lamps broken during relamping and subsequent management.
- Ensure that the contract requires the contractor to comply with the State’s universal waste regulations for managing spent lamps.

**iv. Recycling Materials That Require Special Handling From Major Appliances**

**a) Background**

Appliances are valuable sources of scrap metal when they become obsolete or are no longer needed.<sup>118</sup> However, some of the components in appliances contain materials that can cause health or environmental problems if they are not removed and properly managed prior to recycling.<sup>119</sup> California law requires that appliances, and certain materials within appliances, be properly handled.<sup>120</sup> For information on appliance recycling in California contact Teresa Rizzardo at DTSC at (916) 323-3624.

**b) Regulation**

The details of the Certified Appliance Recycler laws can be found in California Public Resources Code Section 42160 *et seq.*, and Health and Safety Code Section 25211, *et seq.* Pursuant to these provisions specified materials that cannot be disposed of in a solid waste facility and require special handling, such as chlorofluorocarbons (CFC), hydro-chlorofluorocarbons and other non-CFC replacement refrigerants,<sup>121</sup> must be removed from major appliances,<sup>122</sup> such as air-conditioners, and properly recycled by a Certified Appliance Recycler<sup>123</sup> prior to scrap metal processing.<sup>124</sup> As a general matter, a person who intends to

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[http://www.dtsc.ca.gov/HazardousWaste/Mercury/upload/HWMP\\_REP\\_BMP\\_Fluorescent-Tubes.pdf](http://www.dtsc.ca.gov/HazardousWaste/Mercury/upload/HWMP_REP_BMP_Fluorescent-Tubes.pdf).

118 Certified Appliance Recycler (CAR) Program, Department of Toxic Substances Control, California Environmental Protection Agency, *available at*

[http://www.dtsc.ca.gov/HazardousWaste/Mercury/Certified\\_Appliance\\_Recycler.cfm#Appliance\\_Recycling](http://www.dtsc.ca.gov/HazardousWaste/Mercury/Certified_Appliance_Recycler.cfm#Appliance_Recycling) (referred to below as “CAR Program website”).

119 *Id.*

120 *Id.*

121 *See* Cal. Pub. Res. Code § 42167 (defining “Materials that require special handling”).

122 *See* Cal. Pub. Res. Code § 42166 (defining “major appliance” as “any domestic or commercial device, including, but not limited to, a washing machine, clothes dryer, hot water heater, dehumidifier, conventional oven, microwave oven, stove, refrigerator, freezer, air-conditioner, trash compactor, and residential furnace”).

123 Cal. Health & Saf. Code § 25211(a) (defining “Certified appliance recycler” as “a person or entity engaged in the business of removing and properly managing materials that require special handling from discarded major appliances, and who is certified [by DTSC]”). *See* CAR Program Website, *supra* note 118 (For a list of local Certified Appliance Recyclers in your area, please see DTSC’s Listing of Certified

remove materials that require special handling from a major appliance must obtain certification from DTSC.<sup>125</sup> However, in order to remove refrigerants from major appliances a person must obtain certification from EPA pursuant to 40 Code of Federal Regulations Section 82.161.<sup>126</sup> For information on EPA regulations related to stratospheric ozone protection, including requirements governing the recycling of refrigerants, please call the Stratospheric Ozone Information Hotline at (800) 296-1996.

In addition, certain documentation must accompany discarded appliances to ensure that materials that require special handling are removed by Certified Appliance Recyclers and others authorized by EPA.<sup>127</sup>

#### **D. Working With Certified Unified Program Agencies (CUPAs)**

The Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Unified Program) consolidates, coordinates, and makes consistent the administrative requirements, permits, inspections, and enforcement activities of six environmental and emergency response programs, including the hazardous waste regulations found in Title 22 of the California Code of Regulations referred to above.<sup>128</sup> The state agencies responsible for these programs set the standards for their program while local governments implement the standards.<sup>129</sup> The local agencies implementing the Unified Program are known as Certified

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Appliance Recyclers, *available at*

<http://www.dtsc.ca.gov/HazardousWaste/Mercury/upload/WebCARList-May10-2010-2.pdf>.

124 CAR Program Website, *supra* note 118. Cal. Pub. Res. Code § 42175.1. Cal. Health & Saf. Code § 25212.

125 Cal. Health & Saf. Code § 25211.1(a).

126 Cal. Health & Saf. Code § 25211.1(b). *See* CAR Program Website, *supra* note 118 (It is not necessary for a person who is certified as a refrigerant technician by U.S. EPA to obtain certification from DTSC if he or she only removes refrigerants from major appliances. However, a person who removes refrigerants and other materials that require special handling must be certified by U.S. EPA and DTSC). *See also* Ozone Layer Depletion - Regulatory Programs, Complying With The Section 608 Refrigerant Recycling Rule, United States Environmental Protection Agency, *available at*

<http://www.epa.gov/Ozone/title6/608/608fact.html#ownercert> (providing an overview of the refrigerant recycling requirements of Section 608 of the Clean Air Act of 1990, as amended (CAA), including final regulations published on May 14, 1993 (58 F.R. § 28660), August 19, 1994 (59 F.R. § 42950), November 9, 1994 (59 F.R. § 55912), and July 24, 2003 (68 F.R. § 43786). Under Section 608 of the CAA the EPA promulgated the regulations establishing certification requirements for refrigerant recyclers found at 10 Code of Federal Regulation Section 82.161.

127 CAR Program website, *supra* note 118. Cal. Health & Saf. Code § 25211.3.

128 Unified Program Home website, California Environmental Protection Agency, *available at* <http://calepa.ca.gov/CUPA/>. *See also* Unified Program: Laws and Regulations, California Environmental Protection Agency, *available at* <http://calepa.ca.gov/CUPA/LawsRegs/> (identifying the following six programs: Aboveground Petroleum Storage Tank Program; Business Plan Program; California Accidental Release Prevention Program; Hazardous Material Management Plan/Hazardous Material Inventory Statement Program; Hazardous Waste Generator/Tiered Permitting Program (including the hazardous waste regulations found in Title 22 of the California Code of Regulations); and Underground Storage Tank Program).

129 *Id.*

Unified Program Agencies (CUPAs).<sup>130</sup> Every county in California is covered under the Unified Program by a CUPA or other participating agency. Local jurisdictions must comply with business reporting requirements enforced by the CUPAs.<sup>131</sup> In addition, other requirements may apply depending on the type of hazardous waste being generated. For more information on the Unified Program contact John Paine at the California Environmental Protection Agency (Cal/EPA) at (916) 327-5092.<sup>132</sup>

## 2. Recycling Requirements Under California Law

As noted, in California generators are required to recycle specific wastes, e.g., certain universal wastes such as fluorescent lamps and refrigerants used in air-conditioning units. In addition, all generators must comply with the recycling requirements established by their local jurisdiction.<sup>133</sup>

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130 *Id.* See Cal. Health & Safety Code § 25404(a)(1)(A) (defining “Certified Unified Program Agency” or “CUPA” as “the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.”).

131 27 C.C.R. §§ 15600-15620.

132 See also CUPA Directory Search, California Environmental Protection Agency, available at <http://calepa.ca.gov/CUPA/Directory/default.aspx> (providing online directory to search for and view location and contact information for CUPAs and other local agencies, groups and contacts associated with the Unified Program).

133 See Cal. Pub. Res. Code § 41780 (establishing diversion requirements that local jurisdictions must satisfy). See also Cal. Pub. Res. Code § 41780 (“The county recycling component shall include a program and implementation schedule which shows the methods by which the county will, in combination with the source reduction and composting components, reduce a sufficient amount of solid waste disposed of within the unincorporated area of the county to comply with the diversion requirements of Section 41780.”); Cal. Pub. Res. Code § 41070 (stating same requirement as applied to cities).