DTSC Q&A session
2005 CUPA Conference

The panel members would like to point out that their opinions are not always grounded in the "black and white" of the law or regulation, but are often attempts to provide sound advice based on specific situations and a common-sense approach to regulation with an eye to the intent of the rule. If a definitive answer is needed, please provide questions to DTSC in writing and a written opinion with legal backing will be provided in return.

For purposes of this question and answer session, the following terms will be used as defined below:
"LQG": A business that generates more than 1000 kg of hazardous waste (RCRA and/or non-RCRA) in any month.
"SQG": A business that generates less than 1000 kg of hazardous waste (RCRA and/or non-RCRA) in any month.
"CESQG": A business that generates less than 100 kg of hazardous waste (RCRA and/or non-RCRA) in any month.

Questions submitted in writing may have been altered to better convey the question asked. Clarifications provided by DTSC in the question are included in parenthesis and in italics font.

1. <u>Small containers such as bread pans are used to contain small leaks of oil from aging equipment. The containers are drained into a used oil drum periodically. Does the used oil regulation *(generator regulatory requirements)* apply to these small containers? If so, how is it possible to comply?</u>
   It was the opinion of the panel that small pans or catch devices may not be considered "containers" in instances such as this. The prevailing thought of the panel was that small containers used to catch drips or to collect drained oil were more appropriately considered "tools" or equipment than "containers" since their function was only to catch waste and transfer it to approved accumulation/storage containers. As tools or equipment rather than containers, these pans would not be subject to the regulatory requirements

   a. <u>Does this answer change when the pan is used to hold waste when the addition of the waste can be controlled?</u>
      The panel did not believe that the regulatory status of the pans would change as long as the function of the pan did not. Pans used only to collect waste oil and convey it to a designated accumulation containers were, in the opinion of the panel, still being used as "tools" rather than accumulation containers.

2. How do you cite a violation for facilities that generate less than 1000 kg/mo. since the specific rule that is being violated is found not in state regulation, but in Federal regulation (40 CFR)?
   The panel noted that basis for the specific regulation can be found in Cal. Code Regs., title 22, section 66262.34(d). It was suggested that this section be the citation, with the pertinent federal regulatory section included in parenthesis after this section.

3. What authority does a CUPA have to approve or address plans for clean up that is being conducted under a Voluntary Clean-Up Order issued by the DTSC?
   The panel did not address this question, but suggested that the person that asked the question contact Mr. Tim Miles at 916-255-3710.

4. Please clarify the rules for Episodic Generation:
   a. If a business is normally a SQG but occasionally generates enough waste to be a LQG, how long does that site have to comply with LQG rules?
      The panel did not initially agree on the length of time that a business would be subject to the LQG regulations, but the panel felt comfortable stating that the proper timeframe was one month. This opinion was based on a statement found in the "RCRA Orientation Manual" which says "If a generator's status does in fact change, the generator is required to comply with the respective regulatory requirements for that class of generators for the waste generated in that particular month."

   b. Are wastes generated from the rinsing/cleaning of an Underground Storage Tank used to hold petroleum exempt from being considered when looking at whether a facility is a LQG or a SQG?
      The panel could not find a reason that rinsate from UST-petroleum tank cleaning, if determined to be hazardous, would not impact the generator's regulatory status. It was strongly suggested by the panel that the generator explore using the tank removal contractor as a "co-generator" and having the contractor assume the responsibility for waste management and recordkeeping (such as contingency and training plans). When using a co-generator agreement, it is strongly suggested that the agreement be clearly executed in writing.

   c. If a business is subject to LQG standards because of episodic generation, are they then required to provide a tank assessment for tanks unrelated to the activity that caused them to be a LQG?
      The panel believes that episodic LQG events should not trigger the full spectrum of LQG standards on a generator. This answer is grounded in the spirit of the rule which is to regulate LQGs at a

higher standard because of the higher potential impact if there is a release. Episodic generators do not normally accumulate large amounts of waste so to hold them to all LQG standards would place an unfair burden on them and provide disincentive to conducting non-critical activities such as tank pulls. Rules such as contingency planning, training and reporting under the Biennial Report are directly relevant to the actions undertaken during these episodic generation events and should be applicable.

5. Used contaminated laboratory delivery pipettes and micro-discs- do they meet the definition of "empty" (*contaminated*) containers?
   The panel felt that delivery pipettes or micro-discs that are not pre-loaded with a material are more appropriately defined as "tools" than containers since their purpose was to transfer materials from one location to another, and not to act as accumulation devices.

6. If a business stores enough spent fluorescent light tubes or used CRTs, which meet the definition of Universal Waste, to trigger Haz-Mat Business Plan reporting requirements, does that business have to submit a Business Plan?
   The panel disagreed on this answer. One panelist felt that if Universal Wastes met the definition of a hazardous waste, a subset of hazardous materials, and in doing so triggered the business plan reporting requirements, it should be treated no differently than other hazardous materials. Another panelist pointed out that in discussions with the CUPA Forum Board, it had been agreed that since these items did not require MSDSs under 29CFR, they would be exempt from the business plan reporting requirements. The panel would suggest contacting the CUPA Forum Board to bring this question to an official forum and have it answered with input from local agencies, DTSC and OES all present.

   a. Does this answer change if the tubes or CRTs are broken?
      The panel agreed that broken devices did not affect the above answer since broken tubes and CRTs (those that are not intentionally broken) are still Universal wastes. Intentionally broken tubes and CRTs are hazardous wastes.

7. Can a business use an in-house or other non-certified laboratory to analyze wastes when the analysis will be used only to make a waste determination?
   The panel expressed that opinion that in-house and non-certified laboratories may be used when making a waste determination. This opinion was based on the fact the regulations require use of a certified laboratory only when sampling is required. Since waste determinations can be made using generator knowledge in lieu of sampling, sampling is not *required* in making a waste determination. The generator relying on

an in-house lab would be making this waste determination based on their knowledge of the waste which is rooted in the in-house analysis.

8. Under what circumstances can the "presumptive" chemicals listed in Table X of title 22, Chapter 11 (Identification and Listing of Hazardous Wastes) be considered non-hazardous?
   The chemical names found in Table X of Chapter 11 represent chemical wastes that are presumed to be hazardous unless otherwise demonstrated. The mere existence of one of these chemicals in a waste would not cause t to be hazardous, and a panelist noted that this presumption could be rebutted in the same manner that any hazardous waste determination was made, including generator knowledge. It was suggested that a written record be kept in this instance, documenting how that decision was reached. It is not a requirement to document this decision, however.

9. A grated trench carries only non-hazardous wastes (mainly oily residue in water and dirt) to a on-site waste water handling (*treatment)* facility. The sediment that accumulates in the trench may be non-RCRA (*hazardous)* due to metals. Would the trench be regulated as a tank under the hazardous waste tank regs?
   The panel agreed that the trench is not a regulated tank system since the trench is not being used to convey a hazardous waste. The sludge that is incidentally accumulating in the trench does not become a hazardous waste until it is removed from the trench.

   a. How does this thinking apply to wet floors located beneath plating areas?
      The panel expressed that this thought process may be extended to wet floors in some instances. It was pointed out that many wet floors operate as secondary containment for the hazardous materials that are contained in the tanks above them, and that in those instances, the constant conveyance of liquids on wet floor may diminish the ability of the floor to operate as a containment structure. One panelist suggested that operators of businesses that have wet floors be left with a suggestion to hose-off or remove all contamination from the floor at least weekly, if for no other reason but to provide a clear way to inspect the floor to ensure that the containment structure has not been compromised.

   b. Does the federal regulatory allowance for exemption of industrial wastewater discharges from the definition of a solid waste apply in California?
      Yes. This language was adopted into California regulations and can be found in Title 22, section 66261.4(a)(1).

10. What are the recordkeeping requirements for businesses that self transport <5 gallons or 50 pounds to a permitted facility?
The panel agreed that businesses that self transport wastes to a permitted facility under the provisions of Health and Safety Code section 25163(c) do not have any specific recordkeeping requirements for these shipments. It is strongly suggested that CESQGs that take advantage of the exemption provided in HSC 25163(c) keep records showing the dates, amounts and types of waste disposed of. 40 CFR 261.5(g)(3) requires CESQGs to "ensure delivery" of their wastes to proper disposal facilities. The section does not specify that this must be accomplished by maintaining records, but it is sound advice.

11. Please clarify the tank cleaning regulations (*found in T22, section 67383 et seq)*. The section seems to read that a tank which is going to be scrap metal does not need to be cleaned using these standards.
One panelist described the development and intent of the tank cleaning regulations. The panelist pointed out that tank systems, prior to cleaning may meet the criteria of a hazardous waste, and because of that would be excluded from the definition of scrap metal. In order to end ambiguities about which tanks would be hazardous and which tanks would not be hazardous, this section was enacted to provide general cleaning standards that would ensure that tanks are cleaned to a standard that would then allow the tank to be handled as scrap metal.

12. Why does DTSC inactivate EPA ID numbers?
The panelists noted that the most common reason for inactivating EPA ID numbers was the business's failure to respond to DTSC's annual Verification Questionnaire.

The following questions were not able to be asked or answered due to the time constraints of the class, but were submitted for consideration:

13. How are dust collection systems regulated if they collect finely divided regulated metals? The drums are attached to the collection system and are either removed and shipped as hazardous waste or are emptied into another drum which is then managed as hazardous waste.
In either instance, the drums which are connected to the collection system are part of the system. The wastes which are collected in the drum would not be subject to regulation as waste until the drum in which they are contained is removed from the system because the dust collection system is a "non-waste-treatment-manufacturing unit" and the CCR, title 22, section 66261.4(c) exclusion would apply.

    a. Do accumulation time requirements apply?
    Only once the drum has been removed from the collection system.

b. <u>If water is placed into the drum when empty to reduce the ignitibility of the metal waste, is this treatment?</u>
The panel does not believe that this would be considered treatment. Title 22, section 66270.1(c)(2)(D) provides an analogous exemption from treatment for placing absorbent in a container before waste is added.

14. <u>Is the passive evaporation of water from a container with an open lid OK? Assume no VOCs in the waste. The regulation says that "containers shall be kept closed while adding or removing waste". Is this removing waste?</u>
When reading HSC, section 25123.5(b), the exempt activities (such as passive evaporation, must be conducted in accordance with the regulations. While regulations for container management do allow containers to be open when removing waste, the same regulations clearly state that containers may not be "opened…. or stored in a manner which *may* …cause it to leak." (Emphasis mine). It is the opinion of the maintaining an open container of liquids without a lid would increase the likelihood of a leak or release. This opinion is reinforced when the specific evaporation exemption is examined and the legislation clearly points to equipment such as vents and floating roofs which are integral parts of the storage tank/container while maintaining "closure" of the tank/container.

15. <u>A process tank sends non-hazardous waste into a settling tank in which liquid and solid fractions separate by gravity. The solids are hazardous and are pumped to a heated drying tank for additional water removal. The water fraction flows from the settling tank directly to the sewer. Which tanks/pipes in this system would require a tank assessment?</u>
The piping and pumps that feed the settled solids to the heated drying tank, and the heated drying tank itself would be a tank system and would be subject to tank assessments as provided in CCR, title 22, section 66265.193. The settling tank would not be subject to the tank assessment because the waste as it originally entered the tank was not hazardous, even though a hazardous waste is generated in the tank through settling.

a. <u>What if (*instead of a process tank)* this system processes a hazardous waste upstream of the settling tank, and the waste entering the settling tank is non hazardous?</u>
No change in above answer. Even thought the settling tank is at the back end of a treatment system or unit, the definition of "unit" clear says that it is "…combination of tanks or tank systems…located together that are used in sequence to treat or accumulate one or more compatible HAZARDOUS wastestreams." Once the wastestream was rendered non-hazardous by the upstream treatment system, the settling tank is no longer part of the unit.

16. Three material storage tanks (A,B, and C) are piped together into a fourth tank (D). When materials in tanks A, B, and C are no longer usable, they are released to tank D. The materials in tanks A and B are characterstic hazardous wastes. The material in tank C is non-hazardous. The resultant commingled waste stream found in tank D is non-hazardous.
    a. What parts of this system would require a tank assessment?
       All of the piping leading from tanks A, B, and C to tank D, and tank D itself would be considered a tank system.

    b. Does it matter is one of the wastes (say in tank A) is a listed waste instead of a characteristic waste?
       Yes. The listing would carry through from tank A through all subsequent tanks and all wastes that the listed waste gets mixed with due to the mixture rule (T22, section 66261.3(a)(2)(E)). The exception to the mixture rule would be if the listed waste was listed only for ignitibility and/or reactivity and the resultant mixture does not exhibit a characteristic. Other specific mixture rule exclusions can be found in 66261.3(a)(2)(F).