



DTSC POLICY REGULATION PRIORITIES FOR 2024

Liliana Cahuas, Chosu Khin, Megan Melnick, Brian Ogg, Tracy Vandewarker
Session Code Tu-B2
Tuesday, February 27, 2024



26th California Unified Program
Annual Training Conference
February 26-29, 2024

Overview

- Speaker Introductions
- California-specific Regulations
- RCRA Conforming Regulations



Presentation Topics

- Plant Waste Exclusion
- Airbags Rule
- Generator Improvements Rule
- Pharmaceuticals Rule
- Manifest Exemption
- Industrial Ethyl Alcohol Exemption
- Definition of Waste and Requirements for Recycling



California Specific Regulations

- State criteria used for hazardous waste classification
- Non-RCRA hazardous waste



PLANT WASTE EXCLUSION



Plant Waste Exclusion

Background

- CUPAs requested DTSC's evaluation of the fish bioassay test for plant media waste and other agricultural crop waste
- Unprocessed plant waste exhibited aquatic toxicity



Plant Waste Exclusion

Background

- Previous testing of plant products resulted in test failure
- Adoption of California's aquatic toxicity criteria in response to spills
- Plant waste management



Plant Waste Exclusion

Exclusion Overview

- Excluding 'plant waste' and 'cannabis waste' that are only aquatically toxic
- Plant waste that meets any CalRecycle definition of:
 - Agricultural material
 - Green material
 - Vegetative food material
- Cannabis waste as defined by Department of Cannabis Control



Plant Waste Exclusion

Definitions – Agricultural Material

- Waste material of plant or animal origin
- Derived from: agriculture, horticulture, silviculture, and other similar activities



Plant Waste Exclusion

Definitions – Green Material

- Any plant material separated at point of generation
- Examples: tree and yard trimmings, natural fiber products, wood waste



Plant Waste Exclusion

Definitions – Vegetative Food Material

- Intended for consumption
- Examples: produce, edible flowers, and plants



Plant Waste Exclusion

Definitions – Cannabis Waste

- Any material intended for disposal that contains cannabis but is not otherwise considered a hazardous waste
- Examples: cannabis goods and products



Plant Waste Exclusion

Timeline

- Continuing discussions with CUPAs and outside agencies
- Stakeholder workshops: summer 2024



Plant Waste Exclusion

Any Questions?



RCRA Authorization Overview



RCRA Authorization Overview

- U.S. EPA provides the baseline hazardous waste requirements
- Implementation options:
 - Federal hazardous waste management program or
 - State hazardous waste management program (U.S. EPA authorization required)
- State authorization is a rulemaking process where U.S. EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of U.S. EPA



RCRA Authorization Overview

- California is an authorized state
- Why is this important?
 - Required by California law
 - Helps keep DTSC's regulations current
 - California received RCRA grant money to maintain equivalency



Airbags Rule



Airbags

- Airbag module contains a housing, cover, cushion, and **inflator**
 - Inflator is a canister containing an igniter, a booster material, and a gas generator
- Works by an electronic signaling of propellants to react for cushions to quickly inflate



Propellants in Airbags

- Chemicals
 - Sodium azide
 - Ammonium nitrate
 - Guanidine nitrate
 - Potassium nitrate
 - Potassium perchlorate
- Hazardous waste characteristics of reactivity and ignitibility
- Deployment of the airbag consumes the propellant



Current Management in California

- Airbags containing sodium azide must be removed from vehicles prior to crushing or transfer to a baler or shredder for recycling (PRC 42167; PRC 42175)
- Intentional deployment of an airbag is considered treatment
- Airbag generators in California
 - Auto dealerships
 - Repair/services shops
 - Scrap metal or auto dismantlers



U.S. EPA Interim Final Rule: Conditional Exemption for Undeployed Airbags

Background

2015 NHTSA mandated Takata Airbag Recall

- 65-70 million airbag inflators
- At least 400 alleged injuries and 27 deaths

2015 Preservation Order

- Department of Transportation (DOT)
- Recalled inflators to be preserved



U.S. EPA Interim Final Rule

Background

2018 Takata bankruptcy

- Reduce number of preserved inflators

2018 U.S EPA Interim Final Rule

- Exempting the collection of airbag waste from hazardous waste requirements so long as certain conditions were met



Intent of the Interim Final Rule

- Response to the Takata airbag recall
- Facilitate urgent removal of defective airbag inflators
- Decrease storage time
- Dispose of properly
- Prevent recalled airbags from being diverted back into vehicles
- **Include non-Takata airbags**
- Assist automobile dealers and other entities in handling airbags
- Creates an exemption
- Provide alternate standards



Overview of the Interim Final Rule

Definitions:

- Airbag Waste – any airbag modules or inflators that is considered hazardous waste
- Airbag Handler – any person who generates airbag waste
- Airbag Collection Facility – a facility that collects and stores airbag waste for more than ten days
- Designated Facility – RCRA permitted facility authorized to accept airbag waste



Overview of the Interim Final Rule (Continued)

- The interim final rule creates a conditional exemption in 40 CFR section 261.4(j) for airbag waste
- The airbag handler sends the waste to a RCRA designated facility **or** to an airbag collection facility
- The airbag handler meets all the conditions in the exemption



Conditions for Exemption

- Accumulate no more than 250 airbag modules and inflators
- Accumulate airbag waste for no longer than 180 days
- Package airbag waste in containers designated to address the risk posed by the waste
- Label airbag waste “Airbag Waste – Do Not Reuse”
- Ensure airbag waste shipments comply with all applicable DOT regulations (49 CFR sections 171 through 180)
- Maintain records for at least three years



Conditions for Exemption (continued)

- Send airbag waste to either:
 - A collection facility in the U.S. under the control of a vehicle manufacturer or their authorized representative
 - Under the control of an authorized part administering a remedy program
 - A designated facility as defined in 40 CFR 260.10



Airbags Rulemaking Timeline

- March 2024: Emergency rulemaking
- Winter 2024: Regular rulemaking



Airbags Rule

Any Questions?



Generator Improvements Rule



Generator Improvements Rule (Background)

- The Generator Improvements Rule (GIR) updated Title 40 of the Code of Federal Regulations (CFR)
- Updates became effective federally on May 30, 2017
- Primary objectives include:
 - Reorganization
 - Clarification
 - Strengthen environmental protection
 - Provision of greater flexibility for generators to comply with hazardous waste requirements



GIR Rulemaking

Phase 1 – Adopt mandatory requirements and other amendments

- Federal requirements that are more stringent/broader in scope than California's hazardous waste program
- *Required to maintain RCRA authorization*
- Reorganizational and clarify amendments

Phase 2 – Adopt optional requirements

- Less stringent/equivalent to California's hazardous waste program
- Not required to maintain authorization



GIR Rulemaking Process

- Health and Safety Code, Chapter 6.5, Section 25159 requires DTSC to adopt regulations to maintain RCRA authorization
- Regular Rulemaking
 - Public Participation
 - 45-day and 15-day public comment periods
 - Economic and Fiscal Impact
 - Rulemaking Record Documentation
- Final package submission



Amendments Proposed in Phase 1

- Federal provisions that are currently more stringent than those of California
- Changing the term Conditionally Exempt Small Quantity Generator (CESQG) to Very Small Quantity Generator (VSQG)
- Reorganization of the regulations
- Adding new definitions and modifying some existing definitions



New Requirements in GIR Phase 1

- Renotification
- Labeling and marking for tanks
- Special condition for ignitable or reactive wastes
- Pre-transportation marking
- Closure requirements for LQGs
- Incompatible waste requirements in SAAs
- Documenting arrangements with local authorities or attempt
- Quick reference guide



GIR Phase 1 Rulemaking Timeline

- Public notice and 45-day comment period: March 24 – May 8, 2023
- 15-day comment period: July 5 – July 20, 2023
- Final package submission to OAL: March 21, 2024
- Effective date: July 1, 2024



GIR Phase 2 (Optional Provisions)

- Purpose, scope, and applicability
- Hazardous waste determination and recordkeeping
- Electronic system bar codes for the wastes
- Independent requirements



GIR Phase 2 Optional Provisions

- VSQG conditions for exemptions
- Alternative standards for episodic generation
- Set back distance from fence line for ignitable and reactive wastes
- Clarifications
- Mixing hazardous waste with solid wastes for waste counting
- Biennial reporting
- Prohibition of liquid hazardous waste disposal in landfills



GIR Phase 2 Process

- Discussions held with CUPAs and internal DTSC staff
- Planning stakeholder workshops in the Fall 2024
- Projected Phase 2 rulemaking to begin towards the end of 2024



GIR Rule

Any Questions?



Pharmaceuticals Rule



Pharmaceuticals Rule

- 2019: U.S. EPA adopted 'Pharmaceuticals Rule'
- New standards for healthcare facilities and reverse distributors managing RCRA hazardous waste pharmaceuticals
- Encourages proper management of hazardous waste pharmaceuticals at healthcare facilities



Pharmaceuticals Rule

Adoption in California - Timeline

- Regular rulemaking process
- Workshops: Summer 2024



Pharmaceuticals Rule

Any Questions?



BREAK TIME!



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

- Background summary
- Purpose of prioritization
- Regulation text from the Code of Federal Regulations
- Proposed regulatory changes and an example



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

Background Summary (continued)

- When is a manifest required?
 - Offsite transportation
- When is a manifest not required?
 - Onsite transportation



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

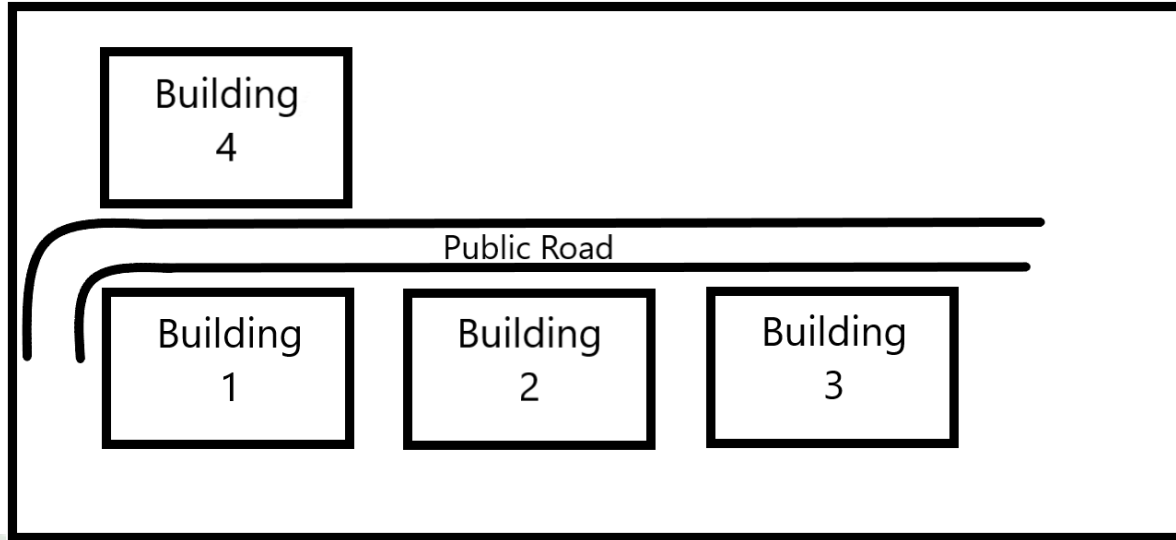
Background Summary (continued)

- Definition of onsite, title 22 CCR §66260.10:
“the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which that person controls and to which the public does not have access, is also considered onsite property.”



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

Example:



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

Background Summary (continued)

- The manifest exemption was included in the final Military Munitions Rule
- Applicable to all generators and TSDFs
- Criteria
 - Within or along the border of contiguous properties
 - Controlled by the same person



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

Purpose of Prioritization

- Optional regulation
- Environmental impacts
- Health and safety impacts
- Stakeholders want this regulation



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

Regulation text of the manifest exemption,
title 40 CFR §262.20(f):

- “The requirements of this subpart and § 262.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding 40 CFR 263.10(a), the generator or transporter must comply with the requirements for transporters set forth in 40 CFR 263.30 and 263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.”



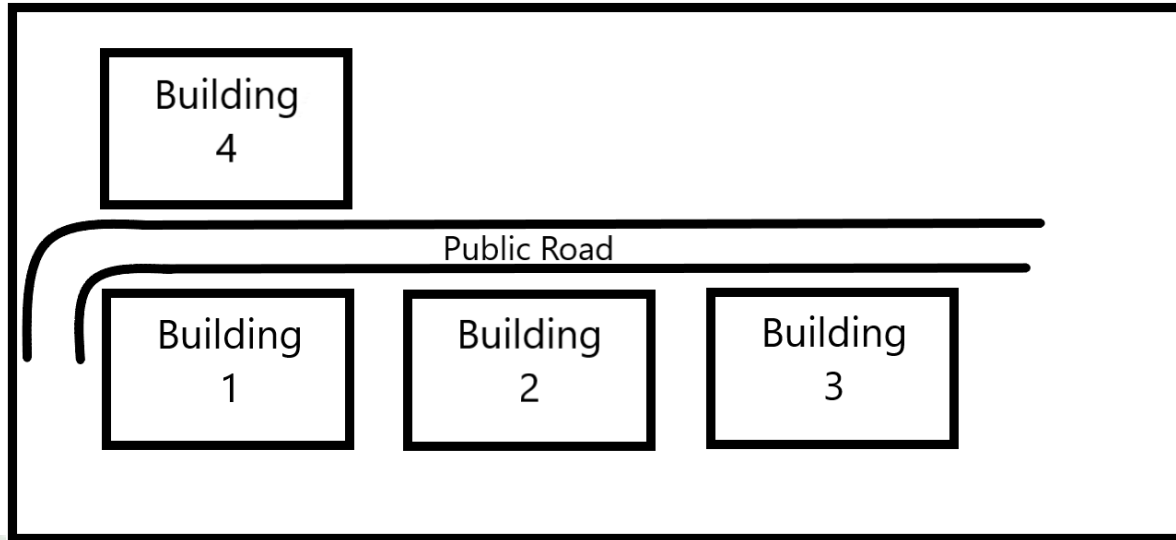
Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

- The federal equivalent found in title 40 Code of Federal Regulations §262.20(f) will be added to title 22 California Code of Regulations §66262.20(f)
- Regulatory changes



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

Example:



Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways of Contiguous Properties

Any Questions?



Industrial Ethyl Alcohol Exemption



26th California Unified Program
Annual Training Conference
February 26-29, 2024

Industrial Ethyl Alcohol Exemption

- COVID-19 caused a spike in the demand for alcohol-based hand sanitizer which led to increased production and importation.
- This surge was aided by the FDA's 2020 decision to temporarily allow non-medical alcohol distillers to produce hand sanitizer.
- The FDA exemption ended Dec. 31, 2021, leaving many businesses with unsellable surpluses after Mar. 31, 2022.



Source: KTVU Fox 2



Source: Fox 11



Source: Fox 11



Industrial Ethyl Alcohol Exemption

- Alcohol-based hand sanitizer stockpiles are a fire hazard due to the products' room temperature flash point ($\approx 66^{\circ}\text{F} - 77^{\circ}\text{F}$).
- Several significant blazes have occurred in southern CA:
 - I-10 in LA (*Nov. 11, 2023*)
 - Downtown LA (*Jan. 2, 2023*)
 - Carson (*Sept. 30, 2021*)



Industrial Ethyl Alcohol Exemption

- In addition, hand sanitizer surpluses are being illegally dumped in CA:
 - In Sept. 2023, a DTSC contractor removed 2,600 gallons from Lucerne Valley.
 - At least 19 other illegal dumping incidents have occurred in LA County since 2022.
 - Many similar incidents are suspected.



Industrial Ethyl Alcohol Exemption

- Alcohol-based hand sanitizers are categorized as a D001 ignitable waste under RCRA and must be incinerated.
- However, there is currently a nationwide hazardous waste incinerator backlog caused by multiple factors, including:
 - Labor shortages created by the pandemic.
 - A surge in manufacturing during COVID-19.
 - Scheduled and unscheduled incinerator maintenance.



Industrial Ethyl Alcohol Exemption

- DTSC seeks to adopt the Industrial Ethyl Alcohol (IEA) Exemption in 40 CFR § 261.6(a)(3)(i).
- This emergency rulemaking will apply to ethanol recyclers that operate in CA.
- It will also exempt generators from most RCRA requirements when legitimately recycling.



Industrial Ethyl Alcohol Exemption

- This includes the ability to transport IEA to recyclers without a manifest.
- The IEA Exemption will not affect local codes, DOT regulations, or regulations pertaining to imports and exports.
- This rulemaking will enable firms to bypass the incinerator backlog through recycling.



Industrial Ethyl Alcohol Exemption

- This is now possible due to U.S. EPA's reinterpretation of the IEA Exemption's applicability:
 - Initially made in a May 5, 2023 response letter to Dynamic Recycling that acknowledged the regulations of the TTB.
 - Restated in a memo reissued on May 9, 2023, titled "RCRA Management of Excess Alcohol-based Hand Sanitizer."



Industrial Ethyl Alcohol Exemption

- This emergency rulemaking will be in effect for a minimum of 180 days.
- It can then be readopted two times after that, for a maximum of 180 additional days (90 days per readoption).
- DTSC will make the IEA Exemption a permanent subsection in the CCR.



Industrial Ethyl Alcohol Exemption

**Management
Review**

February / March

**5-Day Public
Notice**

March / April

**OAL Review &
Approval**

April / May



26th California Unified Program
Annual Training Conference
February 26-29, 2024

Industrial Ethyl Alcohol Exemption

Any Questions?



Definition of Waste and Requirements for Recycling



Definition of Waste and Requirements for Recycling

- Background & History of Federal Rulemakings
- What do the Proposed Changes Accomplish?
- Proposed Regulatory Text
- Legitimate vs. Sham Recycling
- What's this mean for you?
- What's next?



Background - U.S. EPA Definition of Solid Waste

Date	Federal Register	Description
1985	50 FR 614 January 4, 1985	<p>Amended existing Definition of Solid Waste (DSW) and set up recycling requirements for solid wastes.</p> <ul style="list-style-type: none">• Definition of scrap metal and scrap metal exemption. Required to be recycled.• Definition of accumulative speculatively and reclamation.• Types of secondary materials (40 CFR 261.4, Table 1).• Concept of sham recycling and “legitimate expectation of being recycled.”
2008	73 FR 64668 October 30, 2008	<p>Revises DSW.</p> <ul style="list-style-type: none">• Adds generator-controlled exclusion to 40 CFR 261.4(a)(23) for hazardous secondary material recycled under the control of the generator.• Adds transfer-based exclusion to 40 CFR 261.4(a)(24) and (25) for secondary material transferred to a third party for recycling.• Codifies the definition of legitimate recycling with first three factors mandatory and fourth factor optional.



Background - U.S. EPA Definition of Solid Waste

Date	Federal Register	Description
2015	80 FR 1694 January 13, 2015	Revises the 2008 Rule. <ul style="list-style-type: none">• Replaces the transfer-based exclusion with the verified recycler exclusion.• Makes all four factors mandatory for legitimate recycling.• Adds remanufacturing exclusion.
2018	83 FR 24664 May 30, 2018	Due to two court cases, DSW is amended. <ul style="list-style-type: none">• Removes verified recycler exclusion (except certain provisions).• Reinstates transfer-based exclusion to the 2008 version.• Adds provisions to 2015 rule for containment and emergency preparedness.• Makes fourth legitimate factor as optional (reinstated to 2008 version).



2023 - U.S. EPA Definition of Solid Waste

Date	Federal Register	Description
2023	88 FR 54036 August 9, 2023	<p>Hazardous Waste Technical Corrections – Direct final rule for Hazardous Waste Generator Improvement Rule, Hazardous Waste Pharmaceuticals Rule, and Definition of Solid Waste Rule.</p> <p>No impact to current proposed rulemaking (Definition of Waste and Requirements for Recycling).</p>
2023	88 FR 84710 December 6, 2023	<p>Partial withdrawal of Hazardous Waste Technical Corrections Rule.</p> <p>No impact to current proposed rulemaking (Definition of Waste and Requirements for Recycling).</p>



Definition of Waste and Requirements for Recycling

- **What do the Proposed Changes accomplish?**
 - Add and amend regulations concerning the definition of waste as it relates to recycling.
 - Modify general and specific requirements related to the recycling of hazardous wastes.
 - Recycling will be legitimate, safe, and done in a protective manner.
 - Applying the requirements to both RCRA and non-RCRA recycling simplifies the program, makes it clearer, and more consistent.



Definition of Waste and Requirements for Recycling

- **Proposed Text**

- Modify definition of “accumulated speculatively.” Require labeling.
 - Consistent with the definition in 40 CFR § 261.1(c)(8)
- Adopt definition of “sham recycling.”
 - Consistent with the definition in 40 CFR § 261.2(g)
- Require Emergency Preparedness, Contingency Planning and Emergency Response.



Definition of Waste and Requirements for Recycling

- **Proposed Text**

- Scrap Metal
 - Add scrap metal to 22 CCR 66261.2, Table 1 to be consistent with 40 CFR 261.2, Table 1
 - Modify scrap metal exemption found in 22 CCR 66261.6(a)(3)
- Require Legitimacy Factors and apply to both RCRA and non-RCRA recyclable materials.
- Non-substantive changes





LEGITIMATE RECYCLING VS. SHAM RECYCLING

Key Questions?



Question 1: What is it?

Type of recyclable material?



Question 2: What is going to happen to it?

Use or reuse

Reclamation

Conditions and requirements

Is there a process
to evaluate if
recycling is
legitimate?

Yes! Where?

Four
Legitimacy
Factors in
40 CFR §260.43

Legitimate Recycling – 40 CFR 260.43

- Factor 1: Materials must provide a useful contribution to the recycling process or to a product or intermediate.
- Factor 2: Recycling must produce a valuable product or intermediate.
- Factor 3: Materials must be managed as valuable commodities.
- Factor 4: Products of recycling must be comparable to legitimate products or intermediates. No Toxics Along for the Ride.



Sham Recycling

Disposal of hazardous waste in guise of recycling!

40 CFR § 261.2(g):

A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in § 260.43.

Legitimate: Lead-contaminated foundry sands reused in foundry molds.



Sham:

Lead-contaminated foundry sands reused as playground sand.



Resources

U.S. EPA

- [Hazardous Waste: Legitimate Recycling versus Sham Recycling](#)
- [RCRA Online](#)

#11426, U.S. EPA Memo, Sylvia Lowrance, April 26, 1989

<https://archive.epa.gov/epawaste/hazard/web/pdf/11426.pdf>

Key U.S. EPA Definition of Solid Waste Rulemakings ([Federal Register](#))

- January 4, 1985, 50 Federal Register 614
- October 30, 2008, 73 Federal Register 64668
- January 13, 2015, 80 Federal Register 1694
- May 30, 2018, 83 Federal Register 24664



What does this mean for you (CUPAs)?

When you inspect a generator that's a recycler...

Are they complying with legitimate recycling?

Accumulated speculatively?

Start dates on drums and containers?

Emergency preparedness and contingency planning?

You can ask questions to ensure the recycling is legitimate and done in a protective manner.



What's next?

- Timeline
- Outreach efforts



Definition of Waste and Requirements for Recycling

Any Questions?



Any Questions?





Presenter Contact Information

Liliana Cahuas: Liliana.Cahuas@dtsc.ca.gov

Chosu Khin: Chosu.Khin@dtsc.ca.gov

Megan Melnick: Megan.Melnick@dtsc.ca.gov

Brian Ogg: Brian.Ogg@dtsc.ca.gov

Tracy Vandewarker: Tracy.Vandewarker@dtsc.ca.gov

