

# COMPLIANCE WITH HAZARDOUS MATERIALS LAWS AND REGULATIONS

## OVERVIEW

A variety of federal, State, and local laws and authorities regulate the use, disposal, and cleanup of hazardous materials and the reporting of hazardous material spills. The regulations and agencies most relevant to CALFED activities are described below.

- **Resource Conservation and Recovery Act of 1976 (RCRA).** The U.S. Environmental Protection Agency (EPA) administers the RCRA (PL 94-580), as well as the Hazardous and Solid Waste Amendments of 1984. This legislation provides the principal regulation for the generation, storage, transportation, and disposal of both solid (primarily nonhazardous) and hazardous waste. RCRA also regulates the installation, use, and removal of underground storage tanks. RCRA imposes reporting and permitting requirements and provides for operational control of those who generate, treat, store, transport, or dispose of hazardous waste. RCRA provides a general definition of the term “hazardous waste” and defines by regulation the specific materials that are considered hazardous waste under Subtitle C; the regulatory definition evolves as new information becomes available. In California, the California Environmental Protection Agency (CalEPA)—through the [Department of Toxic Substances Control \(DTSC\)](#) and the [State Water Resources Control Board \(SWRCB\)](#)—has assumed primary responsibility for the implementation of RCRA regulations.
- **Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and other statutory authorities.** CERCLA, also known as the Superfund Act of 1980 (PL 96-510), is also administered by the EPA. It is intended to protect the public and the environment from the effects of inactive and abandoned hazardous waste sites and new hazardous material spills, in contrast to RCRA, which is intended to address materials that are currently destined for disposal or recycling. CERCLA provides funds to compensate victims and to decontaminate the environment. The EPA Region 9 Superfund Division manages the Region’s Superfund and emergency response programs for California, such as the cleanup of major hazardous waste sites, emergency response to oil and chemical spills, and oversight of cleanups at federal facilities (including military base closures). The statutory authorities for these programs include CERCLA, the Superfund Amendments and Reauthorization Act, the Occupational Health and Safety Act (OSHA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Oil Pollution Act of 1990.
- **Hazardous Waste Control Law (HWCL).** State hazardous waste regulations are primarily contained in the HWCL (California Code of Regulations, Title 22, Division 4, Environmental Health), administered by the DTSC. HWCL lists hundreds of hazardous and potentially hazardous chemicals; establishes criteria for identifying

hazardous materials; regulates the storage, transport, and disposal of hazardous wastes; and identifies hazardous wastes that cannot be disposed of on land.

- **Additional water quality regulations.** Water quality regulations developed from the [Porter-Cologne Water Quality Control Act](#) are designed to protect the quality of waters in California. Title 23 of the California Code of Regulations contains the water quality regulations pertinent to environmental contamination. See “Other State Water Resources Control Board and Regional Water Quality Control Board Permits and Authorizations” earlier in this chapter for information on SWRCB and RWQCB authorizations under these regulations.
- **Local ordinances.** California’s Secretary for Environmental Protection has established a unified hazardous waste and hazardous materials management regulatory program (Unified Program) as required by statute (Health and Safety Code Chapter 6.11). The Unified Program consolidates, coordinates, and makes consistent portions of the following six existing programs:
  - hazardous waste generators and hazardous waste onsite treatment,
  - underground storage tanks,
  - hazardous material release response plans and inventories,
  - California accidental release prevention program,
  - aboveground storage tanks (spill control and countermeasure plan only),
  - uniform fire code, and
  - hazardous material management plans and inventories.

A local certified unified program agency (CUPA) is required to consolidate, coordinate, and make consistent the administrative requirements, permits, fee structures, and inspection and enforcement activities for these six program elements within a county or city. Most CUPAs have been established as a function of a local environmental health or fire department.

- **Reporting of hazardous materials spills.** California Health and Safety Code Section 25507 requires the immediate reporting of any release or threatened release of hazardous materials. In addition, EPCRA and CERCLA require notification for all releases that equal or exceed federal reporting quantities. The [California Governor’s Office of Emergency Services \(OES\)](#) coordinates overall State agency response to major disasters in support of local government, maintains a 24-hour toll-free toxic release hotline, and relays spill reports to several other State and federal response and regulatory agencies, as well as local governments.

[Figure 23](#) illustrates the processes for addressing hazardous materials.

## WHO NEEDS TO COMPLY?

Several types of CALFED actions could expose individuals and the environment to hazardous materials or wastes. These materials may be encountered during construction activities such as dredging, excavation, and dewatering required for storage, conveyance, and restoration projects. CALFED actions may encounter existing hazardous materials associated with:

- agricultural production activities (e.g., storage facilities and pits contaminated with fertilizers or pesticides, leaking or abandoned fuel underground storage tanks, abandoned pesticide storage containers, or agricultural field drainage ponds and pits);
- industrial and commercial sites (e.g., spills and leaks of petroleum hydrocarbons, polychlorinated biphenyls [PCBs], or industrial solvents from tanks and pipelines; metals and polycyclic aromatic hydrocarbons from railroad operations; or metals from inactive and abandoned mines);
- active and closed military bases (e.g., metals, PCBs, asbestos, and unexploded ordinances);
- closed landfills; and
- elements from naturally occurring geologic formations.

In addition, CALFED actions could affect public health and the environment if hazardous materials used during construction or operation activities are handled improperly. For example, hazardous materials (such as gasoline, oils, lubricants, and solvents that may be stored, used, or handled during construction) could be released in accidental spills. Also, CALFED actions related to wetland restoration and levee rehabilitation could result in the resuspension of contaminants (e.g., mercury-laden sediments) or the increase of methyl mercury released to the Bay-Delta ecosystem.

## WHAT DOES THE EVALUATION AND APPLICATION PROCESS ENTAIL?

Evaluation and application processes vary widely for different types of hazardous material situations. The following are brief summaries of the measures that project proponents would probably need to take for some CALFED actions.

- **Existing hazardous materials present at the project site.** Either the applicant or a qualified contractor should conduct Phase I and Phase II environmental site assessments to:
  - identify current and historical land uses of the project area and neighboring land uses;

- delineate the extent of known and potential hazardous material contamination within and adjacent to the project limits; and
- evaluate potential impacts on project construction.

If hazardous material contamination is suspected or confirmed, the applicant should consult with the DTSC and the EPA to determine appropriate cleanup actions and mitigation. If the project is likely to result in the resuspension of contaminants or to increase the amount of methyl mercury released to the Bay-Delta ecosystem, the applicant should also consult with the SWRCB and the applicable regional water quality control board (RWQCB) to coordinate additional permits and determine appropriate mitigation measures.

- **Generation, storage, treatment, or disposal.** Any applicant that proposes a project that generates, stores, treats, or disposes of hazardous materials as described in the HWCL (Health and Safety Code, Division 20, Chapter 6.5) may need to obtain a permit to operate from the DTSC and/or comply with local CUPA requirements. An applicant should consult with both the DTSC and the local CUPA to determine appropriate permitting requirements and fees for the project. Several counties and cities within the CALFED program area have certified CUPAs; the applicant should contact the DTSC to determine whether the proposed project area falls within the jurisdiction of a certified CUPA. In addition, the applicant should consult with the SWRCB to coordinate any potential Clean Water Act Section 401 water quality certifications, National Pollutant Discharge Elimination System (NPDES) permits, or other SWRCB or RWQCB permits that may be required.
- **Accidental spills and discovery of unknown hazardous materials.** Government agencies must receive emergency notification of any significant release or threatened release of hazardous materials or encounter with hazardous materials, including oil. At a minimum, notification must be given to the local emergency response agency (911 or the local fire department), the local CUPA (if different from the local fire department), the OES Warning Center (1-800-852-7550), and, if appropriate, the California Highway Patrol. In addition, the National Response Center and other federal agencies may require notification. An applicant should contact OES before beginning construction to determine potential project-specific notification requirements. Notification requirements and contact telephone numbers should be included in a project-specific spill prevention and response plan.

## **DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?**

CEQA compliance will probably be required for any CALFED action that requires a DTSC/CUPA permit or involves any discharge to a water body. Coordination with one or more local entities may also be necessary to meet local requirements.

## WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the permitting process for CALFED actions and decrease the risk of hazardous material impacts on the public and the environment.

- **Design the project in such a way that construction will not take place where there is existing hazardous material contamination.** If possible, a project should be designed to avoid areas of known hazardous material contamination.
- **Avoid dispersion of existing hazardous materials.** Project construction activities in areas of known hazardous material contamination should take place during favorable weather conditions to prevent dispersion of known or potentially contaminated soils and sediments. Best management practices should be designed to prevent the dispersion of hazardous materials. It may be necessary to conduct core sampling and analysis of proposed excavation areas and to develop engineering solutions to avoid or prevent environmental exposure of toxic substances after excavation.
- **Design the project in such a way that the generation, storage, treatment, and disposal of hazardous materials are minimized or avoided.** For example, construction of aboveground and underground fuel storage tanks should be avoided for projects in urban areas where existing fuel sources are easily accessible. In addition, the project should be designed to minimize the generation of methyl mercury.
- **Train construction and operations personnel.** In accordance with federal, State, and local regulations, all construction and operations personnel should be informed of the potential presence of known and unknown hazardous materials within project limits and appropriately trained for the safe handling and disposal of such materials. Appropriate safety equipment should be available at all times during construction and operations activities.
- **Develop a spill prevention and response plan.** A written project-specific spill prevention and response plan should be developed and enacted to ensure proper management of hazardous materials used during project construction and operation and encountered unexpectedly during construction. The spill prevention and response plan should be cross-referenced against other project plans and permits (e.g., a stormwater pollution prevention plan may be required under NPDES) to make certain all response techniques and mitigation are compatible.

- **Coordinate early with DTSC and other resource agencies.** DTSC generally provides preapplication assistance consisting of application guidance, presubmittal meetings, and general technical assistance at no cost to the applicant. DTSC permit processing requires compliance with CEQA; if CEQA compliance has not already been completed, a CEQA initial study may be required. If additional resource agency permits or agreements are required for the proposed project, early consultation with the other resource agencies and the DTSC is helpful, especially if the additional permits also require CEQA compliance or if there are controversial issues.



[Go to Chapter 3](#)