



## Environmental Auditing: Integrated California and Federal Compliance Guide

RELEASE 155 – FEBRUARY 2022

### new & noteworthy

- **Air Quality – Heavy-Duty Omnibus Low NOx Regulation:** On December 31, 2021, the California Air Resources Board (CARB) adopted the Heavy-Duty Omnibus Low NOx Regulation (California Notice Register 2021 No. 53-Z). This final rule implements two measures previously included within CARB’s Revised Proposed 2016 State Strategy for the State Implementation Plan, “Low-NOx Engine Standard,” which aims to significantly reduce NOx emissions from new engines during certification, and a “Lower In-Use Emission Performance Level,” which aims to ensure in-use heavy-duty vehicles continue to control emissions throughout their useful lives. The rule amendments also modify a number of existing on-road heavy-duty vehicle program elements.

This change impacts **Air Quality Management, Part A, Requirements Applicable to all Air Districts, Introduction and Rulebook.**

- **Air Quality – Emissions Reporting for Criteria Air Pollutants and Toxic Air Contaminants:** On November 12, 2021, the California Air Resources Board (CARB) adopted a final rule (California Notice Register 2021 No. 46-Z) that expands the statewide system of annual reporting of emissions, criteria pollutants, and toxic air contaminants from about 1300 reporters to over 60,000, by amending the reporting requirements to use permitted emissions and pollutant-based thresholds to establish applicability. In addition to including a multi-year phase-in schedule, there is also an “abbreviated” reporting requirement for some permitted processes. This action also requires reporting for diesel-powered portable equipment and coordinates criteria and toxic air contaminant reporting requirements with the Air Toxics Hot Spots Emissions Inventory Criteria and Guidelines.

This change impacts **Air Quality Management, Part A, Requirements Applicable to all Air Districts, Introduction and Rulebook.**

- **Toxic Substances Control Act (TSCA) – Mercury Reporting:** EPA issued a final rule on November 8, 2021 (86 FR 61708) revising the agency’s mercury inventory reporting regulations under the Toxic Substances Control Act (TSCA). The original reporting requirements were set forth in a final rule entitled “Reporting Requirements for TSCA Mercury Inventory: Mercury” (“mercury inventory reporting rule”). That rule was challenged in the United States Court of Appeals for the Second Circuit (Second Circuit) by the Natural Resources Defense Council and several state attorneys general in July 2018. The petitioners argued that three exemptions to the reporting requirements violated the statutory mandate within TSCA section 8(b)(10). EPA argued that the three exemptions were lawful because the agency had determined certain reporting to be duplicative or burdensome per existing EPA or other mercury-related reporting requirements.

# release notes

*please review*

Duplicative or overly burdensome reporting requirements are prohibited under TSCA section 8(a) (5). The Agency prevailed on two issues, but the Second Circuit vacated the exemption at 40 CFR 713.7(b)(2) for persons who import pre-assembled products that contain a mercury-added component. The November 8, 2021 rule revisions implement the vacatur ordered by the Second Circuit by making necessary amendments to the corresponding text in 40 CFR 713.7(b) and became effective on December 8, 2021.

These changes impact the **Toxic Substances Control Act Introduction and Rulebook**.

- **Emergency Planning and Community Right-to-Know Act (EPCRA) - Toxics Release Inventory Reporting:** EPA issued a final rule on November 24, 2021 (86 FR 224) that adds natural gas processing (NGP) facilities (also known as natural gas liquid extraction facilities) to the scope of the industrial sectors covered by the reporting requirements of Section 313 the Emergency Planning and Community Right-to-Know Act (EPCRA), commonly known as the Toxics Release Inventory (TRI), and the Pollution Prevention Act (PPA). Entities potentially regulated by this action are those facilities that primarily engage in the recovery of liquid hydrocarbons from oil and gas field gases and which manufacture, process, or otherwise use chemicals listed at 40 CFR 372.65 in threshold quantities that meet the TRI and PPA reporting requirements. These facilities are categorized under Standard Industrial Classification (SIC) code 1321 and North American Industry Classification System (NAICS) code 211130. This final rule is effective December 27, 2021, and applies for the reporting year beginning January 1, 2022 (reports due July 1, 2023).

These changes impact the **Hazardous Materials Introduction** (Reference Tables 5 and 7).

- **Comprehensive Environmental Response Compensation and Liability Act (CERCLA) – Release Reporting:** EPA issued a final rule (86 FR 62736) on November 12, 2021, that made a minor change to the requirements under 40 CFR Part 302 regarding submissions of CERCLA Section 103 Continuous Release Reports to modify the submission location for these reports, which were previously required to be submitted to respective EPA regional offices. This technical amendment requires all future such reports to be submitted to the EPA Headquarters office. EPA also corrected a typographical spelling error, corrected citations within the section, and amended the listed authority. This final rule was effective on November 12, 2021.

These changes impact the **Hazardous Materials Rulebook**.

- **Drinking Water - Unregulated Contaminant Monitoring Rule:** EPA issued a final rule (86 FR 73131) on December 27, 2021, under the Safe Drinking Water Act (SDWA) requiring certain public water systems (PWSs) to collect national occurrence data for 29 per- and polyfluoroalkyl substances (PFAS) and lithium. EPA is requiring collection of this data under 40 CFR Part 141, Unregulated Contaminant Monitoring Rule, Fifth Revision (UCMR 5). As part of the agency's PFAS Strategic Roadmap, UCMR 5 will provide new data to improve EPA's understanding of the frequency that 29 PFAS (and lithium) are found in the nation's drinking water systems and at what levels and will be used to inform future regulatory determinations and risk-management decisions. EPA intends to include monitoring data from all systems serving 3,300 or more people and a representative sample of 800 systems serving 25 to 3,299 people. If EPA does not receive the appropriations needed to support monitoring all of these systems in a given year, EPA will reduce the number of systems serving 25 to 10,000 people that will be asked to perform monitoring. EPA is also announcing plans for public webinars to discuss implementation of the fifth Unregulated Contaminant Monitoring Rule (UCMR 5). This final rule was effective on January 26, 2022.

These changes impact the **Drinking Water Introduction** (Reference Table 17) and **Rulebook**.

- **South Coast Air Quality Management District – New Source Review for RECLAIM Facilities:** On November 5, 2021, the South Coast Air Quality Management District (SCAQMD) adopted amendments to Rule 2005, which establishes New Source Review requirements for NO<sub>x</sub> and SO<sub>x</sub> emission increases at Regional Clean Air Incentives Market (RECLAIM) facilities. The amendments to Rule 2005 are necessary to implement a narrow Best Available Control Technology (BACT) exemption. The exemption allows for emission increases associated with air pollution control equipment installed for regulatory compliance with a Best Available Retrofit Control Technology (BARCT) rule required to transition the RECLAIM program for NO<sub>x</sub> to a command-and-control regulatory structure.

This change impacts **Air Quality Management in SCAQMD, Rulebook B, Visible Emissions, Fugitive Dust, and NO<sub>x</sub>, SO<sub>x</sub>, and CO Emissions**.

- **Hazardous Waste – Chemically Treated Metal Shredder Residue:** On December 24, 2021, the Department of Toxic Substances Control (DTSC) issued a final rule (California Notice Register 2021 No. 52-Z) that amends the state’s hazardous waste regulations to add a conditional exclusion for chemically treated metal shredder residue. The final rule allows for the transportation and disposal of chemically treated metal shredder residue as a nonhazardous waste provided that certain requirements are complied with.

These changes impact **Hazardous Waste Introduction** (Regulatory Summary).

- **Hazardous Waste – Metal Shredder Aggregate:** On October 25, 2021, the Department of Toxic Substances Control (DTSC) adopted emergency regulations (California Notice Register 2021 No. 44-Z) to define the term “metal shredder aggregate” in the state’s hazardous waste regulations and to exclude “metal shredder aggregate” from the California definition of scrap metal. This rule clarifies requirements relevant to metal shredding facilities to make it clear that the activities conducted to recover ferrous and non-ferrous metals from metal shredder aggregate represent a hazardous waste treatment activity requiring DTSC authorization.

These changes impact **Hazardous Waste Introduction** (Key Compliance Definitions).

- **Solid Waste – Covered Electronic Devices:** On December 31, 2021, DTSC issued an emergency rulemaking (California Notice Register 2021 No. 53-Z) that adds the following to the list of Covered Electronic Devices (CED), bringing them within the scope of the Covered Electronic Waste Recycling Program: (1) organic light-emitting diode (OLED)-containing laptop computers; (2) OLED-containing tablets; (3) OLED-containing desktop monitors; (4) OLED-containing televisions; (5) Liquid crystal display (LCD)-containing tablets; and (6) LCD-containing smart displays. The rule also defines the term “smart displays” for these purposes.

These amendments affect the **Solid Waste Rulebook**.

# release notes

*please review*

## highlights of this release

- **Toxic Substances Control Act (TSCA), Introduction** (Applicability Table), was amended to update the section exemption statement now that importers of products containing mercury-added components are subject to the inventory reporting requirements. The **Rulebook** was amended to remove the previous reporting exemption for importers products that contain a mercury-added components.
- **Air Quality Management in California, Introduction** (General Applicability Checklist and Regulatory Summary), has been revised. The Applicability Table was updated to reflect changes affecting the applicability of requirements for heavy-duty vehicles and for emissions reporting. The Regulatory Summary was revised to update the list of SCAQMD rules not covered in the protocol.
- **Air Quality Management in California, Part A: Requirements Applicable to all Air Districts**, was revised to incorporate regulatory changes to requirements for heavy-duty vehicles and for state-wide emissions reporting.
- **Air Quality Management in California, Part B - Visible Emissions, Fugitive Dust, and NOx, SOx, and CO Emissions**, has been updated to include amendments to the New Source Review requirements for Regional Clean Air Incentives Market (RECLAIM) facilities.
- **Drinking Water, Introduction and Rulebook**, have been revised as follows:
  - The **Introduction**, (Reference Table 17), has been updated to include the list of chemicals for monitoring under UCMR 5.
  - The **Rulebook** has been updated to include the Unregulated Contaminant Monitoring Regulation (UCMR) 5 that took effect in December 2021 and adds requirements for monitoring of various per- and polyfluoroalkyl substances (PFAS) chemicals by public water systems serving more than 10,000 people.
- **Solid Waste, Rulebook**, was revised to add several items to the list of Covered Electronic Devices (CED).
- **Hazardous Materials Introduction** (Reference Tables 5 and 7) were revised to add the SIC and NAICS codes for natural gas processing operations to the scope of the industrial sectors covered by the Toxic Chemical Release Inventory reporting requirements. The **Rulebook** was modified to reflect a technical amendment for the submission of CERCLA Section 103 Continuous Release Reports.
- **Hazardous Waste in California, Introduction** (Key Compliance Definitions and Regulatory Summary) was revised. The term “metal shredder aggregate” was added to the list of definitions and information on a new conditional exclusion for chemically treated metal shredder residue was included in the regulatory summary.

## did you know?

- **DTSC Releases Results of 2021 Violations Scoring Procedure for Hazardous Waste Facilities:** By September 30th of each calendar year, DTSC must issue a facility Violations Scoring Procedure (VSP) score to all permitted operating hazardous waste facilities in California. Scores are calculated by DTSC using a Violation Scoring Matrix and are based on the sum of the scores for violations found during a compliance inspection, including any adjustments for repeat violations. Based upon the Facility VSP Score, DTSC will assign the facility to one of three compliance tiers: acceptable, conditionally acceptable, or unacceptable. DTSC has recently posted the 2021 VSP scores for permitted hazardous waste facilities, which can be viewed at: <https://dtsc.ca.gov/violations-scoring-procedure/>.
- **Significant New Use Rules:** During this update period, EPA has issued a number of significant new use rules (SNURs), or modifications to SNURs, including reporting and recordkeeping requirements. Substance specific SNUR requirements are cited in 40 CFR Part 721. The following is a listing of the Federal Register notices for the SNURs finalized during this period:
  - October 7, 2021 (86 FR 55704);
  - November 15, 2021 (86 FR 62917); and
  - December 10, 2021 (86 FR 70385).

For a listing of these and other recent final SNUR notices, including references to the agency's proposed rulemaking, see <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/recent-activities-new-chemicals>.

- **SCAQMD – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program:** SCAQMD adopted Rule 2305 – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program on May 7, 2021. The WAIRE Program is an indirect source rule that regulates warehouse facilities to reduce emissions from the goods movement industry. There are several upcoming compliance dates that warehouse operators should be aware of. Operators with warehouses  $\geq 250,000$  square feet are required to submit their initial Site Information Report by July 1, 2022, which includes 12 months of truck trip data collected beginning in July 2021. In addition, the first compliance period for operators with warehouses  $\geq 250,000$  square feet is from January 1 – December 31, 2022, with Annual WAIRE Reports required to be submitted by January 31, 2023.
- **BAAQMD - Bay Area EV Acceleration Plan:** California has set a goal of 5 million electric vehicles (EVs) sold by 2030, with conventional vehicles phased out by 2035. The Bay Area Air Quality Management District (BAAQMD) has set as a target that 90 percent of vehicles in the Bay Area should be zero emissions by 2050. The Bay Area and California also share the goal of cutting greenhouse gas emissions to 80 percent below 1990 levels by 2050. To help meet these goals, BAAQMD has released a draft Bay Area EV Acceleration Plan, which combines input from EV market stakeholders and experts, surveys of Bay Area residents, and input from the Bay Area EV Coordinating Council. The plan makes recommendations to implement and meet aggressive EV adoption and market acceleration goals. More information may be found at: <https://www.baaqmd.gov/plans-and-climate/bay-area-pev-program>.