

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 109, Sections 5161 and
5164(a), (b), (c), and (d) of the General Industry Safety Orders

Storage of Hazardous Substances**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons.

Summary and Response to Oral and Written Comments:I. Written Comments.

Joseph Kukla, Manager, Safety and Health, Pick-Your-Part Auto Wrecking, by letter dated
August 2, 2002.

Comment:

Mr. Kukla believes that the definition of hazardous substance may be too sweeping and could conceivably include ambient air ingredients. Ambient air contains oxygen at 21%, capable of supporting combustion, and a number of other actual or potential ingredients such as carbon dioxide, methane, nitrous oxide, hydrogen, and ozone, all of which possess properties which may prove hazardous to employees under certain conditions, such as SMOG alerts. Mr. Kukla admits in his letter that normal percent concentrations of these substances should cause no problem, but indicates that the definition does not include any reference to percent concentration of hazardous ingredients, e.g., 1% for non-carcinogens and 0.1% for carcinogens.

Response:

The Board contends that the definition of hazardous substance applies only within the context of Article 109. Broader issues relating to ambient air are beyond the scope of this proposal. The proposed changes define hazardous waste as a hazardous substance sub-class and have nothing to do with ambient air. Therefore, no modification to the proposal can be considered or is necessary in response to this comment.

The Board thanks Mr. Kukla for his comments and participation in the Board's rulemaking process.

Joseph Kukla, Manager, Safety and Health, Pick-Your-Part Auto Wrecking, by letter dated August 2, 2002.

Comment No. 1:

Mr. Kukla stated that the Division's use of DOT (Department of Transportation) container specifications as an example of approved containers is inadequate; that in order to provide a choice, at least two additional sources of approved containers should be provided.

Response:

The "such as" phrase allows employers to seek other entities, such as engineering firms, qualified to design permanent installations used for hazardous materials storage, or any other appropriate containers. The commenter did not provide suggested examples and the Board does not see a need to add further examples on its own, therefore no modifications are needed in response to this comment.

Comment No. 2:

Mr. Kukla stated that the language of the proposed amendment, in the use of the terms physical and deterioration with respect to container damage is too broad, and a statement of degree of physical damage or deterioration should be part of the subsection amendment. Mr. Kukla considers containers stored outdoors (such as chemical bulk tanks among others) as falling within the purview of this subsection.

Response:

"Container" as defined in subsection (b) specifies "Any tank, vat, drum or other vessel" used for "storage, use, processing, or transportation" excluding underground storage tanks, pipelines, and transportation vehicles such as rail tank cars, barges, and similar equipment. Outside containers subject to physical deterioration from the environment or any other cause fall under this subsection unless otherwise excluded by other vertical standards. The term "deterioration" is a commonly understood term meaning, "to become impaired in quality, functioning, or condition" (Merriam-Webster's Collegiate Dictionary, 10th Ed., 1993). Further elaboration as to degree of deterioration is not needed and therefore no modifications are needed in response to this comment.

Comment No. 3:

Mr. Kukla believes that the proposed change should be expanded to address what is a hazardous amount of any given hazardous substance and to exempt small containers.

Response:

The reference to hazardous amounts and small quantities being exempt are part of the original language of the standard and not part of the proposed changes. Clarifying language was added simply to provide additional examples of hazardous off-gasses beyond the existing “toxic” and “asphyxiant” by the addition of “poisonous” and “corrosive”. The reference to “nitrous oxide” and “chlorine” in the context of the standard provide additional examples of substances that may produce “gases” or “vapors” in hazardous amounts. The original language was revised simply to provide additional examples of hazardous substances and not to revise the concept or term hazardous amounts, therefore, the comments on hazardous amounts and small container exemptions are beyond the scope of this rulemaking and no modification is necessary in response to this comment.

The Board thanks Mr. Kukla for his comments and participation in the Board’s rulemaking process.

II. Oral Comments

There were no oral comments received at the September 19, 2002 public hearing held in Oakland, California.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

No alternatives to the proposal were considered. Therefore, no alternative considered by the Board would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.