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### 15-DAY PUBLIC NOTICE AND COMMENT PERIOD NOTICE OF PUBLIC AVAILABILITY OF POST-HEARING CHANGES

May 1, 2008 – May 16, 2008

### PERMIT BY RULE FOR TREATMENT OF AQUEOUS WASTES CONTAINING CYANIDES

Department of Toxic Substances Control Reference Number: R-96-48  
Office of Administrative Law Notice File Number: Z-07-0605-12

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Pursuant to Government Code section 11346.8, subdivision (c), notice is hereby given that the Department of Toxic Substances Control (DTSC) has revised the text of the proposed regulations, which would provide leeway for either technological or economic reasons for not recycling residual solids generated when treating process solutions. Commenters during the 15-day public comment period requested the change made to the text. A written comment period has been established commencing on May 1, 2008 and closing on May 16, 2008.

#### **Availability of Text of Regulations**

DTSC mailed the original text and made it available for public review and comment on June 15, 2007. A public hearing was held on July 31, 2007 during which written and oral testimony was accepted. In addition, written comments were accepted during the 45-day public comment period that ended July 31, 2007 and during a 15-day public comment period that ended February 19, 2008.

DTSC has now made additional post-hearing changes to the original text. A copy of which is attached. This notice and the accompanying text can also be found on DTSC's internet site at <http://www.dtsc.ca.gov>. The ~~bold strikeout~~ and the **bold double underline** text represent the most current revisions to the original text.

#### **Proposed Regulations**

Permit by Rule (Cal. Code Regs., tit. 22, div. 4.5, ch. 45) is being proposed for the authorization to treat cyanide-containing aqueous waste (or wastewaters). DTSC proposed this self-implementing authorization to closely match the environmental threat posed by specified treatment when the treatment occurs on the same site where the waste is generated. Permit by Rule requires a facility to

notify the local Certified Unified Program Agency (CUPA) (or other agency designated by the Secretary for California Environmental Protection Agency, where there is no CUPA) of the treatment activity. The business must also certify compliance with the numerous protective standards of a Permit by Rule. When the facility has notified, it receives authorization; compliance with the regulatory requirements is determined upon inspection.

A Permit by Rule can only be issued for a specific list of waste streams and associated treatment processes that DTSC has found to be both well characterized and capable of being operated safely. The combination of waste stream and its corresponding eligible treatment is referred to as a Permit by Rule activity in this notice.

This proposed amendment to the Permit by Rule regulations provides regulatory relief by allowing an option to the standardized hazardous waste facility permit currently required to authorize certain onsite treatment of cyanide-containing hazardous waste. This proposed regulation does not affect any existing recycling exemptions or hazardous waste exclusions.

**Modifications to the Proposed Text to California Code of Regulations  
Section 67450.11 Subsection (d)**

The following paragraphs identify changes and provide the basis for changes made to the text of the February 1, 2008 proposed regulations. Any reference to original language means the text found in the June 15, 2007 proposed regulations. References to the post hearing text means the text found in the February 1, 2008 proposed regulations.

Commenters pointed out that recycling should be expanded to include facilities other than metal recovery facilities and to allow residual solids to be land disposed for either technologic or economic reasons.

DTSC has determined that residual solids (wastewater treatment residuals, such as filtercake and sludges from clarifiers) generated by metal finishers contain metals that should be recycled whenever possible. DTSC has added a second alternative as subparagraph (7)(B)2. to allow owners and operators to send residual solids to facilities that reclaim metals when the residual solids must be reclaimed further before recovery is complete. Subparagraph (7)(B) will allow processing by a metal recovery facility, or by a facility that partially reclaims the metals to make the residual solid more acceptable to metal recovery facilities as an alternative to meet the conditions of Permit by Rule.

Very little of the residual solids generated are recycled. The United States Environmental Protection Agency estimated that it was as low as 10% in 1998. Although residual solids may contain copper, nickel, zinc, chromium, tin, or other metals, some metals are more marketable than others. Furthermore, there may

be technological or other economic reasons why the composition of the residual solids will affect the feasibility of recycling this waste.

DTSC has added subparagraph (7)(C) which provides the requirements for a justification statement needed to document the basis of the owner's or operator's decision not to recycle residual solids. This justification statement will need to be completed on a yearly basis for shipments of residual solids that are not recycled.

Subparagraph (7)(C)1. requires that the justification statement include the chemical composition and amount of the residual material. This is necessary to compare the residual solids composition with acceptance criteria of metal recycling facilities. The acceptance criteria will vary depending on the recovery facility, but may include minimum concentration levels of metals, or limits on the cyanide concentrations or impurities.

Subparagraph (7)(C)2. requires that current year cost estimates for the management of residual solids be updated to reflect changing market conditions for the justification statement. Marketability of different metals, treatment costs, disposal costs, and transportation costs are only some of the variables that may change on a yearly basis. Disposal cost includes any pretreatment, such as stabilization.

Subparagraph (7)(C)3. requires current year cost estimates for the management of spent process solutions treated onsite pursuant to Permit by Rule and the cost of treating spent process solutions offsite. Marketability of different metals, treatment costs, and transportation costs are only some of the variables that may change on a yearly basis. Examples of process solutions are plating, stripping, and cleaning solutions.

Subparagraph (7)(C)4. requires that the owner or operator provide the basis for the decision not to recycle the residual solids as either (a) technological or (b) economic. Additional information is required based on this determination.

Subparagraph (7)(D) allows any other information which may have influenced the decision to not recycle the residual solids to be included in the determination.

Subparagraph (7)(E)3. (this was subparagraph (7)(C)3. in the post hearing text dated February 2008) was amended to expand recycling to include reclamation, and to include the justification statement as one of the documents required to be maintained by the owner or operator, if applicable.

DTSC has made minor editorial changes to the text and correctly renumbered subsection (d)(3)(A)-(F).

No changes were made to the Unified Program Consolidated Forms in California Code of Regulations, title 27, division 3, subdivision 1.

### **BUSINESS REPORT**

DTSC has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3(c). However, this will add an additional recordkeeping requirement for those generators who choose to treat spent process solutions onsite and not recycle the residual solids.

### **Submitting Comments**

DTSC considers these new changes to the rulemaking to be sufficiently related changes to the original text, as defined by California Code of Regulations, title 1, section 42. This notice includes all revisions made to the text since those indicated during the original public comment period.

Notice is given that any interested persons may submit comments regarding these revisions and only these revisions of the text by e-mail to [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov) or by mail to:

Regulations Coordinator  
Department of Toxic Substances Control  
Office of Legislative and Regulatory Policy  
P.O. Box 806  
Sacramento, CA 95812-0806

Written comments submitted prior to 5:00 p.m. on May 16, 2008, will be considered.

The information upon which DTSC relied is available for public inspection between 8:00 a.m. and 5:00 p.m. at the Regulations Section, located on the 22<sup>nd</sup> Floor at 1001 I Street, Sacramento, California. Requests and inquiries concerning this matter may be directed to the Regulations Coordinator, at the address indicated above or by telephone at (916) 322-6409. If the Regulations Coordinator is unavailable, telephone the Chief of the Regulations Section at (916) 327-4508.

Inquiries regarding technical aspects of the proposed alternative considered should be directed to Ms. Evelia Rodriguez at (916) 322-3810. Note that any oral inquiries are not part of the rulemaking record.