



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

Deborah O. Raphael, Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Edmund G. Brown Jr.
Governor

CleanTech Appeal Comments Granted Review

The Department of Toxic Substances Control (DTSC) Permit Appeals Team has prepared this document solely for the convenience of potential commenters during the briefing period for the appeal of the hazardous waste facility permit for the CleanTech Environmental, Inc., facility located at 5820 Martin Road in Irwindale, California.

The final permit decision for the CleanTech facility was issued on December 20, 2012. Three petitions for review (appeals) were received in January 2013. On May 29, 2013, the DTSC Permit Appeals Officer issued the "Order Partially Granting Petition for Review and Denial of Review," PAT-FY12/13-01, (Order) which granted review of two appeal comments related to two permit conditions. On June 20, 2013, the Permit Appeals Officer issued a public notice which established a briefing period from June 20, 2013, to August 6, 2013, for anyone to provide written arguments concerning the two appeal comments granted review. This document provides the text for the two appeal comments granted review, the Order sections granting review, the two permit conditions, and selected laws and regulations relevant to the appeals. Commenters are encouraged to review the entire Order, the original petitions for review, and the administrative record for the final hazardous waste facility permit decision.

Any person may file a written argument concerning the appeal comments granted review. The written arguments must be submitted in accordance with the instructions provided in the public notice issued on June 20, 2013.

Appeal Comment 1-4: CEQA specifically requires an EIR for large treatment facilities like the Project. (Petition for review from Mr. Mark Gallagher)

State law recognizes that hazardous waste facilities are particularly prone to causing significant environmental impacts and have special need for thorough environmental review that can only be provided through an EIR. CEQA thus explicitly requires an EIR for the "initial issuance of a hazardous waste facilities permit" for an "offsite large treatment facility." "Offsite large treatment facility" means, "in those cases in which total treatment capacity is provided in a permit, ... capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, [it] means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during anyone month of the current reporting period commencing on or after July 1, 1991."

The Facility clearly meets the definition of "large treatment facility," and thus CEQA explicitly requires an EIR. The total storage capacity of all the units at the Project is 243,240 gallons or 1.79 million pounds of oil. If the Facility operates as similar facilities do, then the total capacity treated would be in excess of 8,000 tons per month. DTSC acknowledges that the Facility's capacity is not just the storage capacity of the tanks, but includes the "monthly treatment and recycling throughput using the authorized tanks."

DTSC attempted to avoid the need to prepare an EIR by adding a permit condition limiting the total amount of hazardous waste the permittee is authorized to treat or recycle to less than 1,000 tons a month. But there are several reasons why DTSC's interpretation of state law is clearly erroneous and why this limit does not avoid the need for DTSC to prepare an EIR.

First, State law refers to "total capacity," not "permitted capacity" or "authorized capacity."

Second, DTSC misinterprets the first part of the statutory definition, which provides that "in those cases in which total treatment capacity is provided in a permit," the classification depends on the total treatment capacity provided in the permit. DTSC claims that the permit "included the individual capacity of the treatment tanks at the facility, but did not provide the total treatment capacity for the facility." This is erroneous. As noted in public comments, the permit did provide the Facility's treatment capacity with sufficient detail to demonstrate that the Facility can readily treat more than 1,000 tons a month, thus requiring an EIR.

Third, DTSC erroneously argues that the second part of the definition of "large treatment facility" is the relevant test: a facility that "treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period." But this portion of the definition of a "large treatment facility" clearly applies only to plants with some operational history or previous reports of operational capacity. If DTSC's interpretation was correct, therefore, no new plant, regardless of its capacity, could ever qualify as a large treatment facility--because as a new plant, it would not yet have made a report the quantity of hazardous waste it treated in the previous months.

Fourth, DTSC's reasoning conflicts with the purposes of the law, which is to provide decisionmakers and the public the detailed information of an EIR-including mitigation and alternatives analysis--before new hazardous waste facilities with a capacity of 1,000 tons a month or more are approved. DTSC cannot avoid this requirement by approving a hazardous waste facility with a capacity several times greater than the threshold for "large treatment facilities" and then limiting the use of that capacity with a permit condition. Once this large hazardous waste treatment facility is built in this community--next to the Santa Fe Dam Recreational Area and other sensitive receptors-it is too late.

Even if DTSC expressly committed to preparing an EIR if the Facility eventually uses its full physical capacity, the purpose of state law will have already been frustrated. The purpose of the EIR is to inform decisionmaking before the project and its environmental effects occur, not after. "A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post-approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken. [Courts] have expressly condemned this use of EIR's."

Fifth, CEQA does not permit an agency to artificially limit the environmental review by purportedly prohibiting further development that may result in significant environmental impacts. An agency "may not substitute a provision precluding further development for identification and analysis of the project's intended and likely" development and impacts.

Accordingly, an EIR is required for the Project. The total treatment capacity, by any reasonable measure, far exceeds 1,000 tons per month. DTSC's interpretation of the statute is clearly erroneous.

Response to Appeal Comment 1-4: Pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a) and (c), the Department is granting review of the issues raised in this comment as they relate to permit conditions II.7 and V.22 and the definition of "large treatment facility" pursuant to Health and Safety Code section 25205.1

The remaining issues in the Appeal Comment do not request review of a condition of the permit and appear to pertain to the CEQA process for this project. CEQA provides a separate judicial appeal process to resolve disputes concerning compliance with CEQA. The Department finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of the issues pertaining to the CEQA process for this project pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For these reasons, the Department denies the petition for review of the CEQA issues raised in this Appeal Comment.

Appeal Comment 2-8: CEQA Explicitly Mandates an EIR for a Large Treatment Facility Like the Project. (Petition for review from Mr. Todd Elliott)

Nearly all of DTSC's responses to comments were so cursory and opaque that they frustrated public participation and violate CEQA. Below, we provide responses to DTSC's "Responses to Comment" on our July 5, 2012 letter. These responses show how DTSC erred pursuant to Code of Regulations, title 22, Section 66271.18, subd.(a). The issues discussed below were all raised during the public comment period. Specifically, as described in our July 5, 2012 letter, and as discussed further below, the

Project clearly qualifies as a "large treatment facility" and CEQA specifically requires DTSC to prepare an environmental impact report.

Response to Comments:

1. We requested DTSC prepare an EIR based on the capacity of the proposed Project. It is clear the proposed Project, a "hazardous waste facility", has the capacity to treat, land treat or recycle significantly more than 1,000 tons of hazardous waste during anyone month period. The sheer size of the facility and the proposed size of the numerous storage tanks make clear that the proposed CleanTech facility has the capacity to treat more than 1,000 tons per month. DTSC and CleanTech's attempt to avoid preparing an EIR pursuant to Public Resources Code section 21151.1(a)(3), as a large treatment facility is erroneous and defeats the purpose of CEQA. Because the total capacity of the units at the Project described in the draft permit is 243,240 gallons, based on a specific gravity of 0.88, a gallon of oil weighs 7.34 pounds, the Project can hold over 1.7 million pounds of used oil (7.34 multiplied by 243,240). The Project must be categorized as a large treatment facility.

Allowing this proposed Project to be approved is a violation of DTSC's trust to our citizens and in particular the Los Angeles County residents whose health and safety will be affected by this Project. Special Condition 22 does not alter the fact the facility has the capacity to treat more than 1,000 tons of hazardous waste per month. Condition 22 does not limit the capacity of the Project to treat less than 1,000 tons per month. The fact that the proposed Project has the capacity to treat over 1,000 tons per month, whether or not that amount is disclosed makes the facility a large treatment facility as defined by Health and Safety Code Section 25205.1(d). DTSC's determination the Project is not a large treatment facility is an erroneous finding of fact. DTSC's determination not to prepare an environmental impact report for this Project is an erroneous conclusion of law.

2. We requested DTSC prepare an environmental impact report based on the capacity of the proposed Project. DTSC's response regarding how much hazardous waste is actually treated or recycled is irrelevant pursuant to the language of Health and Safety Code section 25205.1(d). The only relevant factor is the physical capacity of the treatment facility. As indicated above, based on the proposed size of the tanks for the Project, there is no reasonable conclusion that the Project has a capacity to treat, land treat or recycle less than 1,000 tons per month. To argue otherwise would be to disavow DTSC's duty to protect the environment, businesses and residents in Irwindale and surrounding Los Angeles County. Relying on Condition 22 to exempt the Project from Public Resources Code section 21151.1 (a)(3) is an erroneous conclusion of law.

3. DTSC has incorrectly interpreted the ruling in Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412,444. The Rancho Cordova case, while discussing mitigation measures as conditions of approval,

is not strictly applicable to mitigation measures. Instead, Rancho Cordova requires that any condition of approval which limits the scope of the project to something less than full available capacity cannot limit the environmental review to that condition.

Accordingly, DTSC erred in not preparing an EIR for a project which has the capacity to treat, land treat or recycle 1,000 or more tons per month. The Project is not in compliance with CEQA and therefore the conclusion in Condition 3 is clearly erroneous.

4 DTSC does not negate that the capacity of the proposed Project is greater than 1,000 tons. Accordingly, with an approved facility capable of treating more than 1,000 tons per month, any reasonable person would conclude it is foreseeable that CleanTech will request an expansion in the amount of hazardous waste it can treat in the near future. It flies in the face of reason that a business would construct the Project with the intent of using only a small fraction of its capacity. DTSC's Permit Condition 22 is tantamount to building a 7-terminal airport and limiting airline traffic to one terminal. In fact, Robert E. Brown III, representative for CleanTech, drafted a letter to DTSC in which he argued against the imposition of Condition 22 and requested the removal of Condition 22 from the permit, which limits the amount of used oil CleanTech can treat and/or recycle in one month. (See Responses to Comment, Comment #11-7-4, p. 72.) The only reason to oppose this condition would be to allow for the right to treat more than the 1,000 ton limit per month. This comment clearly shows CleanTech's intent and desire to treat more than 1,000 tons per month. To treat the excess capacity as if it does not exist violates existing case law, CEQA, and reason. DTSC's failure to respond to our comment shows a wanton disregard for California law and for the health and safety of southern California citizens. Accordingly, DTSC's decision is an erroneous conclusion of law.

Response to Appeal Comment 2-8: Pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a) and (c), the Department is granting review of the issues raised in this comment as they relate to permit conditions II.7 and V.22 and the definition of "large treatment facility" pursuant to Health and Safety Code section 25205.1.

The remaining issues in the Appeal Comment do not request review of a condition of the permit and appear to pertain to the CEQA process for this project. CEQA provides a separate judicial appeal process to resolve disputes concerning compliance with CEQA. The Department finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of those issues pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For these reasons, the Department denies the petition for review of the issues related to CEQA raised in this Appeal Comment.

Hazardous Waste Facility Permit

CleanTech Environmental, Inc.

5820 Martin Road

Irwindale, California 91706

EPA Id. No. CAL 000330453

Part II. Description of the Facility and Ownership

7. Facility Size and Type for Fee Purposes

The Facility is categorized as a small treatment facility pursuant to Health and Safety Code section 25205.1, and for the purposes of Health and Safety Code sections 25205.2 and 25205.19.

Part V. Special Conditions

22. The total amount of hazardous waste that the Permittee is authorized to treat or recycle in any one month is accordance with the terms of this Permit shall be less than 1,000 tons.

Laws and Regulations:

Health and Safety Code section 25205.1

25205.1. For purposes of this article, the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any units or other structures, and all contiguous land, used for the treatment, storage, disposal, or recycling of hazardous waste, for which a permit or a grant of interim status has been issued by the department for that activity pursuant to Article 9 (commencing with Section 25200).

(c) "Large storage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, "large storage facility" means a storage facility that stores 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(d) "Large treatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, "large treatment facility" means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(e) "Generator" means a person who generates hazardous waste at an individual site commencing on or after July 1, 1988. A generator includes, but is not limited to, a person who is identified on a manifest as the generator and whose identification number

is listed on that manifest, if that identifying information was provided by that person or by an agent or employee of that person.

(f) "Ministorage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, "ministorage facility" means a storage facility that stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(g) "Minitreatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, "minitreatment facility, means a treatment facility that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(h) "Site" means the location of an operation that generates hazardous wastes and is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which it is not so provided, "small storage facility" means a storage facility that stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(j) "Small treatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which this is not provided, "small treatment facility" means a treatment facility that treats, land treats, or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month of the current reporting period commencing on or after July 1, 1991.

(k) "Unit" means a hazardous waste management unit, as defined in regulations adopted by the department. If an area is designated as a hazardous waste management unit in a permit, it shall be conclusively presumed that the area is a "unit."

(l) "Class 1 modification," "class 2 modification," and "class 3 modification" have the meanings provided in regulations adopted by the department.

(m) "Hazardous waste" has the meaning provided in Section 25117. The total tonnage of hazardous waste, unless otherwise provided by law, includes the hazardous substance as well as any soil or other substance that is commingled with the hazardous substance.

(n) "Land treat" means to apply hazardous waste onto or incorporate it into the soil surface for the sole and express purpose of degrading, transforming, or immobilizing the hazardous constituents.

(o) "Treatment," "storage," and "disposal" mean only that treatment, storage, or disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment, storage, or disposal that does not require this permit or grant of interim status shall not be considered treatment, storage, or disposal for purposes of this article.

(1) "Disposal" includes only the placement of hazardous waste onto or into the ground for permanent disposition and does not include the placement of hazardous waste in surface impoundments, as defined in regulations adopted by the department, or the placement of hazardous waste onto or into the ground solely for purposes of land treatment.

(2) "Storage" does not include the ongoing presence of hazardous wastes in the ground or in surface impoundments after the facility has permanently discontinued accepting new hazardous wastes for placement into the ground or into surface impoundments.

Health and Safety Code section 25205.2

25205.2. (a) Except as provided in subdivisions (c) and (h), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who is issued a permit or grant of interim status within 30 days from the date that a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities exempted pursuant to Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that

reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity ceased before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste, whether generated onsite or received from offsite, before July 1, 1986, and who paid facility fees for any reporting period after that date pursuant to a decision of the State Board of Equalization, and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit or grant of interim status, as specified in Section 25201.6, shall receive a credit for the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

Health and Safety Code section 25205.19

25205.19. (a) If a facility has a permit or an interim status document which sets forth the facility's type, pursuant to Section 25205.1, as either treatment, storage, or disposal, the facility's type for purposes of the annual facility fee shall be rebuttably presumed to be what is set forth in that permit or document.

(b) If the facility's type changes as a result of a permit or interim status modification, any change in the annual facility fee shall be effective the reporting period following the one in which the modification becomes effective.

(c) (1) If the facility's permit or interim status document does not set forth its type, the department may require the facility to submit an application to modify the permit or interim status document to provide for a facility type.

(2) Subdivisions (a) and (d) of Section 25205.7 do not apply to an application for modification pursuant to this subdivision.

(d) A permit or interim status document may set forth more than one facility type or size. In accordance with subdivision (e) of Section 25205.4, the facility shall be subject only to the highest applicable fee.

Public Resources Code 21151.1

21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for a project involving any of the following:

(1) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(A) The construction of a new facility.

(B) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(4) A base reuse plan as defined in Section 21083.8.1. The Legislature hereby finds that no reimbursement is required pursuant to Section 6 of Article XIII B of the California Constitution for an environmental impact report for a base reuse plan if an environmental impact report is otherwise required for that base reuse plan pursuant to any other provision of this division.

(b) For purposes of clause (ii) of subparagraph (A) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in a state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or a state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(d) Paragraph (1) of subdivision (a) does not apply to a project that does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, that is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit that is transportable and that is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment that performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and that is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations, as those sections read on June 1, 1991.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project that, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and that is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process. However, a facility that operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 117690 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to a project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) do not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 of the Health and Safety Code on or after January 1, 1992, but not before that date, or only conducts activities that are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt a project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

California Code of Regulations, title 22, section 66271.18

66271.18 (a) Within 30 days after a final permit decision [or a decision under section 66270.29 to deny a permit for the active life of a hazardous waste management facility or unit] has been issued under section 66271.14, any person who filed comments on that draft permit or participated in the public hearing may petition the Department to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. Any person may petition the Department to review any condition of a temporary authorization under section 66270.42(f). The 30-day period within which a

person may request review under this section begins with the service of notice of the Department's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by the regulations and when appropriate, a showing that the condition in question is based on:

(1) a finding of fact or conclusion of law which is clearly erroneous, or
(2) an exercise of discretion or an important policy consideration which the Department should, in its discretion, review.

(b) The Department may also decide on its own initiative to review any condition of any permit issued under this chapter. The Department shall act under this subsection within 30 days of the service date of notice of the Department's action.

(c) Within a reasonable time following the filing of the petition for review, the Department shall issue an order either granting or denying the petition for review. Public notice of any grant of review by the Department under subsection (a) of this section shall be given as provided in section 66271.9. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file a written argument. Notice of denial of review shall be sent only to the person(s) requesting review.

(d) When review has been initiated pursuant to subsection (a) or (b) of this section, the order denying review or the decision on the merits shall constitute the Department's final permit decision, and shall be effective on the date of the mailing of the order denying review or decision on the merits.

(e) A final permit decision on a petition to the Department under subsection (a) of this section is a prerequisite to seeking judicial review of the Department's decision.

(f) If a permit decision is pending on the date this section is amended to eliminate a hearing under the Administrative Procedures Act, this section shall be applied as follows:

(1) If a Statement of Issues or Accusation was issued prior to the effective date of the amendment, the proceeding shall continue under the regulation in effect when the Administrative Procedure Act proceeding was initiated.

(2) If a Statement of Issues or Accusation has not been issued prior to the effective date of the amendment, the proceeding shall be governed by the amended regulation.