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45-DAY PUBLIC NOTICE AND COMMENT PERIOD

WATER QUALITY MONITORING REQUIREMENTS FOR HAZARDOUS WASTE LAND DISPOSAL UNITS

Department Reference Number: R-2004-11

Office of Administrative Law Notice File Number: Z- 2010-0720-01

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations (Cal. Code Regs.), title 22, division 4.5, chapter 14, article 6, sections 66264.90, 66264.94, 66264.97, 66264.98, 66264.99, 66264.100 and chapter 15, article 6, sections 66265.90, 66265.91, 66265.97, 66265.98, and 66265.99.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

A written comment period has been established commencing on July 30, 2010 and closing on September 15, 2010. DTSC will hold a public hearing on the proposed regulations at 9:00 a.m. on September 15, 2010 in the Sierra Hearing Room, 2nd Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments, orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on September 15, 2010 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:00 a.m. to 12:00 p.m.(noon). Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 "I" Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building's public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification

cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

If you have special accommodation or language needs, please contact Jeff Woled, Regulations Coordinator, Regulations Section, at (916) 322-5225 or by e-mail at regs@dtsc.ca.gov September 1, 2010. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

In accordance with the California Government Code and Americans with Disabilities Act requirements, this publication can be made available in Braille, large print, computer disk, tape cassette, etc. as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact Adrian Recio at (916) 324-3095 or by e-mail at arecio@dtsc.ca.gov.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code section 25150. This section grants DTSC authority to adopt standards dealing with the management of hazardous waste.

Health and Safety Code section 25159. This section grants DTSC authority to adopt regulations allowing the state to maintain authorization to administer a state hazardous waste program in lieu of the federal program under the Resource Conservation Recovery Act.

Health and Safety Code section 58012 (Added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991). This section grants DTSC authority to adopt regulations to execute its duties.

The proposed state regulations are based on, but are not identical to, the following federal regulations: 40 CFR Sections 264.90, 264.94, 264.97, 264.98, 264.99, 264.100, 265.90, and 265.91.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law

The Department of Toxic Substances Control (DTSC) regulates hazardous waste facilities and businesses that generate hazardous waste. DTSC has the primary responsibility for evaluation and remediation of hazardous waste sites and releases to land, surface water, groundwater, and air from hazardous waste facilities.

Owners and operators of permitted and interim status hazardous waste surface impoundments, waste piles, land treatment units, and landfills are required to monitor groundwater, surface water and the unsaturated zone to detect, characterize and respond to releases. These requirements also apply to miscellaneous units and to hazardous waste tank units that cannot be clean closed and therefore are considered disposal units. The water quality monitoring requirements are found in Cal. Code Regs., title 22, division 4.5, chapters 14 and 15, article 6.

Water quality monitoring for hazardous waste land disposal units consists of a detection monitoring program, an evaluation monitoring program, and a corrective action monitoring. Each program requires monitoring of the groundwater, vadose (unsaturated) zone, and surface water.

Some of the requirements may be technically infeasible or resource-intensive, or provide minimal environmental benefit, depending upon site-specific conditions. Presently, the only option for facilities is to apply for a variance and to seek DTSC approval for any deviation from the regulations. This is a cumbersome, resource-intensive process for both facilities and DTSC.

The current regulations implicitly assume that the regulated hazardous waste disposal unit is isolated from other hazardous or solid waste management units. When releases occur from adjacent sources, their respective groundwater plumes may commingle. Groundwater monitoring for a commingled plume poses a particular challenge under current regulations. Owners or operators of a single facility may be able to conduct water monitoring for another source of the release under DTSC's more flexible Corrective Action or Site Cleanup authorities in Health and Safety Code Chapters 6.5 and 6.8, respectively, or under oversight by one of the Regional Water Quality Control Boards under Cal. Code Regs., title 27. Since it is often difficult to determine if the plume is from the regulated unit or a different unit, oversight under multiple regulatory authorities may be duplicative and confusing for owners and operators, the public and the regulators.

In general, the Water Board regulations for cleanup of contaminated sites are found in Cal. Code Regs., title 27. However, the Water Board requires water quality monitoring for hazardous waste land disposal units (referred to as Class I facilities) under Cal. Code Regs., title 23, chapter 15, article 5. The Water Board regulations are similar to Cal. Code Regs., title 22, article 6 but require monitoring and cleanup of nonhazardous constituents that affect beneficial uses of waters of the state as well as hazardous constituents. The Water Board issues Waste Discharge Requirements (WDRs) to Class I facilities; the requirements may be incorporated into a facility's hazardous waste permit.

Current federal law is less stringent than California's requirements and does not address various requirements, in particular, surface water or vadose zone (unsaturated zone) monitoring. In addition, two revisions to federal law, the RCRA Burden Reduction Initiative of 2006 and the Post-Closure Rule of 1998, streamlined various federal requirements for hazardous waste facilities that were considered overly burdensome, including groundwater monitoring requirements for RCRA hazardous waste land disposal facilities. The federal Post-Closure Rule of 1998 also provided flexibility for groundwater monitoring requirements at RCRA hazardous waste land disposal facilities.

Policy Statement Overview

Broad Objectives:

- Provide regulatory flexibility to achieve environmental standards
- Maximize environmental benefit by ensuring that resources go toward environmental priorities rather than requirements that may not be feasible

Specific Objectives:

- Provide regulatory alternatives when requirements are not technically feasible or provide minimal or no environmental benefit
- Facilitate a single site-wide monitoring program for evaluation and cleanup of commingled plumes

Proposed Regulations

The proposed rulemaking would make the following changes:

- Streamline water quality monitoring requirements for surface water, groundwater, and soil pore liquid at regulated units,
 - Allow regulatory flexibility for assessing and cleaning up groundwater contamination when a release from a regulated unit has combined (commingled) with a release from another solid waste management unit (SWMU). A SWMU is any unit at a hazardous waste facility from which hazardous constituents might migrate. Flexibility would be provided by allowing the use of alternative requirements, including Resource Conservation and Recovery Act (RCRA) corrective action requirements or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site cleanup requirements identified in California Health and Safety Code Chapters 6.5 or 6.8, respectively.
- Add a new requirement that groundwater wells for regulated units be adequately decommissioned if the wells no longer provide useful information,
 - Change the reporting requirement for corrective action effectiveness from semi-annual to annual, consistent with recent changes to the federal reporting requirement under the RCRA Burden Reduction Initiative,
 - Allow modification or exclusion of surface water monitoring requirements for regulated units if requirements are impracticable or technically inappropriate,
 - Allow modification or exclusion of unsaturated zone monitoring requirements if technically inappropriate or due to technical limitations, and
 - Allow modification of the number of monitoring points and number of specific Appendix IX analytes for analysis based on site-specific conditions during annual sampling during several phases of remediation.

The proposed draft rulemaking adopts select text based on two federal rulemakings: the Post-Closure Rule of 1998 and the RCRA Burden Reduction Initiative of 2006.

New regulatory text allows significant water quality monitoring program flexibility, consistent with the federal Post-Closure Rule of 1998, 40 CFR Section 264.90, for the owner or operator of a permitted hazardous waste land disposal unit with a commingled plume. This revision allows the owner or operator of a permitted or interim status hazardous waste land disposal unit that is situated among solid waste management units (SWMUs) or areas of concern to replace all or part of the requirements in Cal. Code Regs., title 22, chapter 14, article 6 with alternative requirements if a release has occurred, and both the regulated unit and one or more SWMUs (or areas of concern) are suspected of contributing to the release.

The proposed regulations provide regulatory efficiency and environmental benefit by eliminating potentially duplicative water quality monitoring requirements and allow a facility with a commingled plume to establish a single site-wide monitoring program. Examples of alternative requirements include corrective action requirements in Health and Safety Code Chapter 6.5 and site cleanup requirements identified in Health and Safety Code Chapter 6.8.

This change is consistent with revisions to 40 CFR Section 264.90 implemented pursuant to the federal Post-Closure Rule of 1998 and would allow California to implement provisions that are already in effect in other states.

The proposed regulations do not address the manner by which hazardous waste facilities would implement the changes. In some cases, any changes from a facility's current practices can be incorporated into a permit renewal or issuance of a new permit or post-closure permit. When a facility does not have a permit renewal or issuance of a new permit or post-closure permit, changes will generally be implemented by permit modification in accordance with Cal. Code Regs., title 22, section 66270.42.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has prepared a Notice of Exemption that indicates no significant effect from the project on the environment. This document is available for review with the rulemaking file and is also being noticed and circulated for comment pursuant to the requirements of the CEQA Guidelines. A copy of the draft CEQA document will be available from the Laws, Regulations and Policies page of the DTSC Internet site: http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Water_Quality_Monitoring_Requirements.cfm.

PEER REVIEW

Under the provisions of Health and Safety code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

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).

FISCAL IMPACT ESTIMATES:

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: DTSC has made a preliminary determination that the proposed regulations will have no impact on State revenue or costs.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.

Effect on Housing Costs: DTSC has made an initial determination that there will be no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses:

DTSC has made an initial determination that the adoption of these regulations will save owners or operators of California's hazardous waste land disposal units significant amounts of money when compared with the current regulatory requirements. The proposed regulations offer flexibility for water quality monitoring requirements that currently are not feasible or do not provide significant environmental benefit because of site-specific conditions. Although the amount of savings cannot be precisely determined at this time, savings is expected from reduction in water level monitoring frequency, reduced number of groundwater sample analyses, and the resulting reduction in report generation, especially for facilities. DTSC estimates that statewide savings could exceed \$2.5 million per year.

Significant Statewide Adverse Economic Impact on Businesses:

DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

- (A) **Creation or elimination of jobs within California** – DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.
- (B) **Creation of new businesses or the elimination of existing businesses within California** – DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.
- (C) **Expansion of businesses currently doing business in California** – DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

Effect on Small Businesses:

These regulations are not expected to result in any impacts on small businesses since the regulations primarily affect large companies by providing potential savings.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations will be available from the Laws, Regulations and Policies page of the DTSC Internet site at http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Water_Quality_Monitoring_Requirements.cfm or may be obtained from Jeff Woled of DTSC's Regulations Section as specified below. The information upon which DTSC relied to develop these documents is also available at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Jeff Woled at the address listed below. A copy of the Final Statement of Reasons will also be available from the Laws, Regulations and Policies page of the DTSC Internet site at http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Water_Quality_Monitoring_Requirements.cfm along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Nancy Ostrom of DTSC at (916) 322-3385. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC prior to adoption, amendment or repeal of these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please visit <http://www.calepa.ca.gov/Listservs/dtsc> and subscribe to the applicable Listserv. You may also leave a message for Jeff Woled at (916) 322-5225 or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to:

Jeff Woled Regulations Coordinator
Regulations Section
Department of Toxic Substances Control

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Jeff Woled's phone number is (916) 322-5225. If Mr. Woled is unavailable, please call Jon Cordova at (916) 324-7193.