

SUPPLEMENT TO THE FINAL STATEMENT OF REASONS FOR THE STANDARDIZED PERMIT APPLICATION PROCEDURES REGULATIONS; DTSC REFERENCE # R-2005-11; OAL FILE # 07-0725-02 S

DISCUSSION OF CHANGES MADE AFTER THE ORIGINAL SUBMITTAL

New section 66270.69.2. Changes to this section have been made for clarity.

Reformat: The citations to California Code of Regulations, title 22, chapters 14, 20 and 21 have been reformatted as individual subsections, for easier reading.

Clarification of Citations: The phrase “applicable portions of chapters 14, 20 and 21...” has been replaced with listings of the specifically applicable articles of those chapters.

Chapter 14, for instance, addresses not only the general operating requirements applicable to all hazardous waste management facilities, but also goes into detail, in various articles, of requirements specific to the management of containers, tanks, surface impoundments, landfills, land treatment units, and incinerators. Standardized permit facilities may store and treat wastes only in containers or tanks; the landfill, land treatment unit, and incinerator sections are not applicable to these facilities. This eligibility is discussed in detail in later portions of this supplement. In addition, a standardized permit facility is required to carry less liability coverage than is a full-permit facility that is subject to the liability coverage requirements of chapter 14, article 8, so the cross-citation to existing section 67800.5 (proposed to be renumbered as section 66270.69.4) guides a permit applicant to the appropriate liability coverage requirements.

Under current regulations, the owner and operator of a standardized permit facility would have to read all of chapter to determine the specific applicability of each article. DTSC’s Regional Permitting Project Managers assist permit applicants with this assessment, but narrowing the scope of the citation provides clarity in this section. It does not change the applicability of the existing requirements, so the change is not substantive.

In chapter 20, articles 3, 4 and 5 apply in their entirety, so those full articles are cited in this section. Article 3’s applicability section, section 66270.30, states “The following conditions apply to all permits.” Multiple citations throughout Health and Safety Code chapter 6.5 (section 25189.3(a) is an example) include a standardized permit as a “permit”. Article 2 describing the requirements for a permit application, and article 5, addressing the expiration and continuation of permits, similarly follow as two of the many existing chapters, articles and sections in title 22 applicable because of the use of the term “permit”. Article 4’s applicability is specified in Health and Safety Code section 25201.6.

In article 1, however, the article includes not only the requirements that apply to all facilities (general permitting applicability, the effect of a permit, the process for submitting a permit application, legal signatories, etc.), but specific information that must be part of a permit

application. As explained above, a standardized permit facility may store and treat wastes only in tanks or containers, so the permit application information specific for surface impoundments, waste piles, incinerators, land treatment units, and landfills is not applicability to these facilities or this rulemaking. Under current regulations, the owner and operator of a standardized permit facility would have to read all of chapter to determine the specific applicability of each article. DTSC's Regional Permitting Project Managers assist permit applicants with this assessment, but narrowing the scope of the citation provides clarity in this section. It does not change the applicability of the existing requirements, so the change is not substantive.

In article 2, sections 66270.10 through 66270.16, and section 66270.29 apply as descriptions of a permit application required for all facilities, and for facilities managing hazardous waste in container and tanks. Sections 66270.17 through 66270.27 do not apply to standardized permit facilities, because of specific restrictions on eligibility for the standardized permit tier. The eligibility distinctions are described in detail, in paragraphs below.

Article 2, section 66270.29 Multiple citations throughout Health and Safety Code chapter 6.5 (section 25189.3(a) is an example) include a standardized permit as a "permit". Section 66270.29, specifying DTSC's authority to deny a "permit" application, similarly follows as one of the many existing chapters, articles and sections in title 22 applicable because of the use of the term "permit". Because section 66270.29 states that the department may deny a permit pursuant to chapter 21, and does not deal with applying for a permit, section 66270.29 should not be listed in section 66270.69.2(a)(2).

Other portions of chapter 20 do not apply to standardized permit facilities. Health and Safety Code section 25201.6(g)(1) states as follows: "Except as provided in paragraphs (2), (3), and (4), a facility treating used oil or solvents, or that engages in incineration, thermal destruction, or any land disposal activity, is not eligible for a standardized permit pursuant to this section." (The afore-mentioned paragraphs provide some very specific eligibility exemptions for the recycling of dry cleaning solvents, temporary storage in surface impoundments and incidental metals and solvents during the recovery of precious metals.) Therefore, various portions of title 22 do not apply to a standardized permit facility because the subject activities are excluded from the standardized permit tier. Among these are sections 66270.17 through 66270.27. These sections address surface impoundments, waste piles, incinerators, land treatment facilities, landfills, boilers and industrial furnaces, miscellaneous units, process vents, air emissions equipment required for RCRA-regulated facilities, and drip pads. Each of these units is used to conduct a form of land disposal, incineration, or thermal destruction, or is excluded from the standardized permit tier pursuant to existing title 22 section 66270.69 (proposed to renumber as section 66270.69.1) that states "Notwithstanding any other provisions of this division, offsite or onsite treatment or storage activities, other than those specified in paragraphs (1) through (3) of this section, that do not require a permit under the federal act may be eligible for a standardized permit pursuant to section 25201.6 of the Health and Safety Code." The "federal act" is the Resource Conservation Recovery Act (RCRA). Therefore, sections that apply only to RCRA-regulated activities are excluded from the standardized permit tier.

Additionally, in chapter 20, article 6, titled "Special Forms of Permits" delineates other forms of permits that DTSC may issue: permits by rule; emergency permits; incinerator permits; land treatment demonstration permits; research, development and demonstration permits, boiler

and industrial furnace permits. None of the above pertain to standardized permits. The remaining two sections within existing article 6, however, directly address standardized permits: section 66270.67, “Transportable Treatment Unit Standardized Permit” , and section 66270.69 “Standardized Permit” are being renumbered as part of this current rulemaking and moved out of article 6 and into the new, proposed article 6.5 of chapter 20, for the clarity and consistency that will derive from grouping all the sections specific to standardized permits under one article.

Article 7 of chapter 20 does not apply to standardized permit facilities. Interim status is a form of temporary authorization granted by statute for various types of hazardous waste management facilities, and is always restricted to a set timeframe. Interim status eligibility for standardized permit facilities ended January 1, 1998 pursuant to 25201.6(f)(3).

In chapter 21, the permit review, development, and public review process detailed in article 1 applies to all facilities, including the standardized permit facilities, so article 1 is cited. Article 2 of chapter 21, however, includes extra requirements applicable only to facilities that are required to get a permit pursuant to RCRA requirements. A standardized permit authorizes only those activities not regulated under RCRA, so article 2 is not applicable to the standardized permit facilities or to this rulemaking. Article 2 was added to California Code of Regulations in 1996, so when the standardized permit regulations were originally developed in 1993, article 2 did not exist. Specifying only article 1 of chapter 21 clarifies the applicable scope of chapter 21 to the facilities not regulated under RCRA. Under current regulations, the owner and operator of a standardized permit facility would have to read all of chapter 21 to determine the specific applicability of each article. DTSC’s Regional Permitting Project Managers assist permit applicants with this assessment, but narrowing the scope of the citation provides clarity in this section. It does not change the applicability of the existing requirements, so the change is not substantive.

Corrected Reference: Health and Safety Code section 25250.1, that provides the definition of a “used oil recycling facility” is appropriately included in the initial applicability section of this new article, section 66270.69.1, because that section defines the facilities that are and are not eligible for a standardized permit. A “used oil recycling facility” is one that “reprocesses or re-refines used oil”. Section 66270.69 (proposed for renumbering as 66270.69.1) specifies that used oil recycling is not eligible for a standardized permit, so the reference citation is appropriate for this section. For new section 66270.69.2, however, the exclusion of used oil reprocessing and re-refining is not specifically addressed, so the reference is confusing. This reference is therefore being removed from the final regulations text.

Explanation of Discussion in the Statement of Reasons: In the Initial Statement of Reasons, a brief description of some of the specific chapter 14 information that must be included in an application for a standardized permit is detailed by section. It was not meant to be an all-inclusive list of requirements for a facility; those requirements are spelled out in detail in the guidance provided to the permit applicant by the Permit Project Manager assigned to process the permit. This information is provided in detail during the pre-application meeting required by DTSC policy. In addition, the Project Manager works closely with the permit applicant throughout the permit process to clarify and explain the applicability of various requirements.

In trying for brevity, there are other articles and sections that were not specifically addressed. Most of these are more-general, applicability-type sections, not the specific application and operating requirements, but following is a brief description of each of these articles and/or sections not previously described:

Article 1: This article describes what hazardous waste management activities do and do not require a permit from DTSC, how a facility can transition from interim status (a provisional authorization from DTSC to operate), and explains that DTSC may take enforcement actions against a facility;

Article 2, section 66264.10: This section states that article 1 applies to all facilities except for those exempted in section 66264.1, which is in article 1.

Article 2, section 66264.12: This section lists the various notices that a facility must make to DTSC. These include shipments of waste received from foreign countries, notices to any generators shipping waste to the subject facility that the facility is authorized to accept these wastes, and the requirements to notify DTSC of any change in ownership of the facility. These requirements will be detailed in the permit issued to the facility.

Article 2, sections 66264.19 and 66264.25: These sections do not apply to any of the activities eligible for the standardized permit tier.

Article 3, in addition to section 66264.32: All sections within this article apply to the standardized permit facilities, regarding preparedness and prevention. The requirements include general requirements for construction, maintenance, operation, safety equipment, communications, aisle space, and arrangements with local authorities.

Article 5, in addition to sections 66264.71, 66264.72 and 66264.76: Sections 66264.70, 66264.74, and 66264.77 apply, and detail the requirements for manifesting, recordkeeping and reporting. Section 66264.75, the requirement to submit an Annual Report, applies only to facilities that manage RCRA-regulated wastes, so may or may not apply to a standardized permit facility. A standardized permit facility may manage RCRA-regulated wastes, but the management activity itself does not require a RCRA permit. The applicability of this section must be made on a case-by-case basis by the permit applicant and the DTSC Project Manager, depending on the wastes managed at that particular facility.

Article 6: Article 6 applies only to surface impoundments, waste piles, incinerators, land treatment units, and landfills, so is not applicability to these facilities or this rulemaking.

Article 7: This article addresses closure (cleanup) of a facility when it will no longer be operating. The closure requirements apply to the standardized permit facilities; this phase presumes that all hazardous wastes and hazardous waste residuals will be removed from the facility. The post-closure requirements should not apply to a treatment and storage facility; all wastes will be removed and any residual contamination cleaned up.

Article 8: This article describes the financial responsibility requirements for permitted facilities. Financial responsibility has two parts: closure assurance and liability coverage. All facilities must provide closure assurance. This is money is set aside for cleanup (closure) when the facility will no longer be operated. The article 8 provisions apply to standardized permit facilities. For liability coverage, however, the standardized permit facilities have lower amounts of liability coverage required. This difference is explained in detail in the existing Statement of Reasons.

Renumbered and Amended Section 67800.1/66270.69.3. This section was changed to correct an incorrect citation.

Correction of Citation: The existing section specifies that the owner and operator of a standardized permit must operate the facility in compliance with specified portions of chapter 14 of title 22. It is essential that the information required in the application submittal, as specified in section 66270.69.2, addresses the same topics as will be required for the actual operation of the facility. Article 6 of chapter 14 addresses water quality monitoring and response programs for permitted facilities. As specified in section 66264.90(a), these programs apply only to surface impoundments, waste piles, land treatment units and landfills. Since none of these units are eligible for the standardized permit tier (see discussion of the exclusions in Health and Safety Code section 25201.6(g)(1), above), article 6 does not apply to these facilities or these regulations. This error was made when the regulations were first developed, and is now being corrected. Article 6 requirements would never be applied to a storage and treatment facility, like a standardized permit facility. Under current regulations, the owner and operator of a standardized permit facility would have to read all of chapter 14 to determine the specific applicability of each article. DTSC's Regional Permitting Project Managers assist permit applicants with this assessment, but narrowing the scope of the citation provides clarity in this section. It does not change the applicability of the existing requirements, so the change is not substantive.

Corrected Reference: Health and Safety Code section 25250.1, that provides the definition of a "used oil recycling facility" is appropriately included in the initial applicability section of this new article, section 66270.69.1, because that section defines the facilities that are and are not eligible for a standardized permit. A "used oil recycling facility" is one that "reprocesses or re-refines used oil". Section 66270.69 (proposed for renumbering as 66270.69.2) specifies that used oil recycling is not eligible for a standardized permit, so the reference citation is appropriate for this section. For new section 66270.69.3, however, the exclusion of used oil reprocessing and re-refining is not specifically addressed, so the reference is confusing. This reference is therefore being removed from the final regulations text.