



## **INITIAL STATEMENT OF REASONS**

### **UPA CORRECTIVE ACTION QUALIFICATION (Department Reference Number R-97-11)**

#### **EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS**

The proposed regulations do not duplicate or conflict with federal regulations for corrective action because the U.S. Environmental Protection Agency (U.S. EPA) has not promulgated regulations for corrective action.

Similarly, there are no related federal citations that would either duplicate or conflict with the proposed regulations to delegate environmental assessment and corrective action to unified program agencies (UPAs), pursuant to Health and Safety Code section 25404.1(a)(3)(C).

#### **STUDIES RELIED ON**

DTSC has found this rulemaking to be exempt under the California Environmental Quality Act (Public Resources Code section 21000 et seq.). A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

#### **ALTERNATIVES CONSIDERED**

DTSC conferred extensively with an UPA advisory committee, representing UPAs throughout the state, to solicit comments regarding the nature and extent of the technical expertise that should be required for an UPA to be delegated authority pursuant to Health and Safety Code section 25404.1 (a)(3)(C). Using these discussions, DTSC developed the minimum qualifications for UPA environmental assessment and corrective action authority for the two tiers, the conditions for the less complex sites, and the corrective action procedures contained in the proposed regulations.

DTSC has also held seven public workshops throughout the state since 2001 to present the regulation concepts under consideration. A broad range of interested parties, including local agencies, environmental advocates and industry representatives, participated in the discussions. Comments received during and after the workshops were used to develop language for the proposed regulations.

DTSC considered two alternatives when developing the proposed regulations for qualifications for UPA corrective action. The proposed regulations represent the recommended alternative. The other alternative was to do nothing. This alternative was not selected because UPAs would not be able to qualify to oversee corrective action at facilities under their jurisdiction.

## **DETAILED STATEMENT OF REASONS**

A detailed statement of reasons for each section follows:

### **Amend Section 67450.7. Corrective Action Requirements for Facilities Operating Under Permit by Rule.**

Health and Safety Code section 25404.1 requires DTSC to adopt regulations that specify the qualifications for UPAs to require or conduct corrective action at facilities within their jurisdiction, including permit-by-rule facilities with fixed treatment units. Health and Safety Code sections 25187 and 25404.1 also require that the enforcement and application of corrective action requirements by unified program agencies should be consistent with DTSC and throughout the state. The proposed changes are necessary to ensure that corrective action conducted at permit-by-rule facilities is consistent with corrective action requirements for other facilities under the jurisdiction of a qualified UPA and with corrective action conducted by DTSC. Adding a reference to proposed section 68400.16 is needed to clarify that the new corrective action requirements apply to corrective action at permit-by-rule facilities. The requirements in the section that are inconsistent with the proposed corrective action procedures are being deleted to avoid confusion.

### **Add Section 68400.11. Applicability.**

Health and Safety Code section 25404.1 requires DTSC to adopt regulations that specify the qualifications for UPAs to require or conduct corrective action at facilities within their jurisdiction. Health and Safety Code sections 25187 and 25404.1 also require that the enforcement and application of corrective action requirements by UPAs should be consistent with those used by DTSC and throughout the state. This section is needed to specify the applicability of the proposed regulations and general provisions for the application of the requirements.

(a) This subsection is needed to specify the limitations of the proposed regulations and emphasize that other existing forms of enforcement authority are not changed.

- (b) This subsection is needed to clarify that an UPA's authority for corrective action applies only at UPA facilities for specified releases.
- (c) This subsection is needed to ensure that corrective action conducted pursuant to this chapter is consistent with corrective action conducted by DTSC.
- (d) This subsection is needed to ensure that the corrective action authority granted by the proposed regulations is not in conflict with existing local enforcement authorities.
- (e) This subsection is needed to ensure that qualified UPAs do not conduct or require corrective action at facilities outside of their jurisdiction.
- (f) This subsection is needed to allow DTSC to conduct or require corrective action at sites under the jurisdiction of a qualified UPA.
- (g) This subsection is needed to require a qualified UPA to refer sites to DTSC for corrective action if the activity is beyond the UPAs qualifications or authority.
- (h) This subsection is needed to clarify that the California Environmental Quality Act may apply to activities resulting from the proposed regulations.
- (i) This subsection is needed to clarify that those instances when a qualified UPA shall not require corrective action to avoid conflict with DTSC or other state agencies.
- (j) This subsection is needed to specify the necessary qualifications of engineers, geologists and toxicologists that may provide interpretations, conclusions or recommendations.

**Add Section 68400.12. Definitions Applicable to this Chapter.**

Health and Safety Code section 25404.1 requires DTSC to adopt regulations that specify the qualifications for UPAs to require or conduct corrective action at facilities within their jurisdiction. Health and Safety Code sections 25187 and 25404.1 also require that the enforcement and application of corrective action requirements by UPAs should be consistent with those used by DTSC and throughout the state. This section is necessary to clearly define the terms used in this chapter to provide consistency, precision, and understanding when using these terms.

Most of the definitions in this section are taken from other regulations or laws with the exception of the definition for less complex sites. This definition is needed to identify those sites at which an UPA with Tier 1 qualifications may conduct or require corrective

action in accordance with the proposed regulations. Because the Tier 1 level of qualification requires a demonstration of less technical expertise and less experience, this definition is needed to limit the corrective action activity under this tier to a simple corrective action consisting of removal of a small amount of contaminated soil.

**Add Section 68400.13. Qualification Tiers.**

Health and Safety Code section 25404.1 requires DTSC to adopt regulations that specify the qualifications for unified program agencies to require or conduct corrective action at facilities within their jurisdiction. During extensive workshops and consultation with unified program agencies, DTSC determined that many of the sites likely to be encountered by unified program agencies would require a simple corrective action consisting of removal of a small amount of contaminated soil. As a result, DTSC devised a tiered system of qualifications, allowing unified program agencies intending to conduct or require corrective action at the less complex sites to demonstrate adequate education and experience to require such removals. A unified program agency intending to conduct or require corrective action at any facility under its jurisdiction must demonstrate more technical expertise. This section is necessary to define the activities appropriate for the two levels of qualifications.

(a) This subsection is needed to identify that an UPA with a Tier 1 level of qualification may conduct the specified activities, including corrective action only at less complex sites.

(b) This subsection is needed to specify that an UPA with a Tier 2 level of qualification may conduct corrective action at any site under the jurisdiction of the UPA.

**Add Section 68400.14. Unified Program Agency Qualification Criteria.**

Health and Safety Code section 25404.1 requires DTSC to adopt regulations that specify the qualifications for unified program agencies to require or conduct corrective action at facilities within their jurisdiction. Health and Safety Code sections 25187 and 25404.1 also require that the enforcement and application of corrective action requirements by unified program agencies should be consistent with those used by DTSC and throughout the state.

During extensive workshops and consultation with unified program agencies, DTSC determined that many of the sites likely to be encountered by unified program agencies would require a simple removal of contaminated soil, although more complex corrective action activities may also be required. As a result, DTSC devised a tiered system of qualifications, allowing unified program agencies intending to conduct or require corrective action at the less complex sites to demonstrate adequate education and

experience to require such removals. A unified program agency intending to conduct or require corrective action at any facility under its jurisdiction must demonstrate more technical expertise.

This section is necessary to specify the qualifications appropriate for the two levels of qualifications, consistent with the qualifications that DTSC requires for its own staff.

(a)(1) This subsection is needed to ensure the personnel expertise requirements of the qualified UPA staff in Tier 1 is consistent with the minimum education and technical expertise DTSC requires of its own staff.

(a)(2) This subsection is needed to ensure that the UPA with Tier 1 qualification has the experience necessary to issue orders and oversee or conduct corrective action at less complex sites.

(a)(3) This subsection is needed to ensure that the UPA has the process and policies in place to require or conduct environmental assessment and corrective action for the sites appropriate for its tier of qualification.

(a)(4) This subsection is needed to ensure that the UPA has adequate staff to conduct all of the activities associated with and in support of the necessary environmental assessment and corrective action.

(a)(5) This subsection is needed to ensure that the UPA has the ability to maintain the appropriate recordkeeping, tracking and accounting necessary to conduct environmental assessment and corrective action.

(a)(6) This subsection is needed to ensure that the UPA has the ability to recover its costs associated with the activities appropriate for its tier of qualification.

(b)(1) This subsection is needed to ensure that all UPAs with the Tier 2 level of qualification also demonstrate the necessary qualifications identified for Tier 1. In particular, this includes the necessary policies and procedures, adequate staff resources, appropriate recordkeeping, and the ability to recover costs.

(b)(2) This subsection is needed to ensure that the UPA seeking Tier 2 qualification has personnel expertise that is adequate for environmental assessment and corrective action at any site under the UPA's jurisdiction.

(b)(3) This subsection is needed to ensure that the UPA seeking the Tier 2 level of qualification has specialized expertise in the form of registered professionals in the fields of engineering and geology, as well as toxicological expertise. This expertise is needed for Tier 2 qualifications since and UPA with this level of qualification would be authorized to require or conduct corrective action of any type at any facility under the UPA's jurisdiction. This expertise is needed for the qualified UPA to adequately address potentially complex corrective action scenarios that may require activities such as, but not limited to, evaluation of a variety of treatment alternatives, groundwater monitoring, or determination of appropriate cleanup objectives.

(b)(4) This subsection is needed to ensure that if an UPA seeking the Tier 2 level of qualification elects to obtain the necessary specialized expertise from a source outside its own staff, such as a contractor or interagency agreement, the outside expert(s) providing this expertise is not overcommitted and will be able to devote the amount of time needed to complete the necessary tasks.

(b)(5) This subsection is needed to ensure that the UPA seeking the Tier 2 level of qualification has demonstrated adequate technical experience related to corrective action.

**Add Section 68400.15. Determination of Qualification.**

Health and Safety Code section 25404.1 requires DTSC to adopt regulations that specify the qualifications for unified program agencies to require or conduct corrective action and determine when a unified program agency meets those qualifications. This section is necessary because it describes the process DTSC will use to determine an UPA's qualifications.

(a) This subsection is needed to clarify that UPAs seeking authority pursuant to these regulations must apply to DTSC for approval of their qualification demonstration.

(b) This subsection is needed to place a time limit on DTSC's determination that an application is complete or deficient.

(c) This subsection is needed to place a time limit on DTSC's determination of an UPA's qualifications.

(d) This subsection is needed to specify DTSC's process and timeframe for approving or disapproving of an UPA's application.

(e) This subsection is needed to allow an UPA the opportunity to appeal DTSC's decisions regarding its application.

(f) This subsection is needed to allow DTSC the opportunity to withdraw an UPA's determination of qualification if DTSC determines the UPA is in violation of the proposed regulations, provide for appeal of such actions, and provide a process whereby an UPA can withdraw its qualification.

**Add Section 68400.16. General Provisions.**

Health and Safety Code section 25404.1 requires DTSC to adopt regulations that specify the qualifications for unified program agencies to require or conduct corrective action at facilities within their jurisdiction. Health and Safety Code sections 25187 and 25404.1 also require that the enforcement and application of corrective action requirements by unified program agencies should be consistent with those of DTSC and throughout the state.

When DTSC conducts or requires corrective action, the process is consistent with state and federal guidance, although the specific requirements for a given facility are typically specified in an agreement or order. This section is necessary to clarify the elements of corrective action, ensuring that the corrective action conducted or required by a qualified unified program agency is consistent with those of DTSC and with other UPAs as required by the statutes.

(a) This subsection is needed to ensure that corrective action performed or required by a qualified UPA is performed in a manner consistent with those of DTSC.

(b) This subsection is needed to ensure that corrective action requirements imposed by the qualified UPA are specific to the conditions of the site.

(c) This subsection is needed to ensure that responsibility for addressing a release does not end at a property's boundary.

(d) This subsection is needed to specify the elements of the corrective action process that should be contained in the UPA's application.

(e) This subsection is needed to clarify that any corrective action taken by the UPAs should also be consistent with the requirements of the State Water Resources Control Board.

**Appendix I. Chemicals for Less Complex Sites.**

This appendix is needed to identify the list of chemicals used in the definition of less complex sites.