

**PROPOSED AMENDMENTS TO REGULATIONS FOR MANDATORY
MUNITIONS RULE ADOPTIONS; R-2005-08**

Adopt title 22, division 4.5, chapter 17, to read:

Chapter 17. Military Munitions

Amend title 22, division 4.5, chapter 14, article 1, section 66264.1 to read:

§66264.1. Purpose, Scope and Applicability.

(a) The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste.

(b) The standards in this chapter apply to owners and operators of all facilities which transfer, treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this chapter or chapters 11, 12 or 13 of this division.

(c) The requirements of this chapter apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Federal Marine Protection, Research, and Sanctuaries Act (33 U.S.C. section 1401, et seq.) only to the extent they are included in a permit by rule granted to such a person under chapter 20 of this division. Such person shall comply with the requirements of chapter 14 of this division when transferring, treating or storing hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.

(d) (Reserved)

(e) The requirements of this chapter apply to the owner or operator of a POTW which transfers, treats, stores, or disposes of hazardous waste only to the extent they are included in a permit by rule granted to such a person under chapter 20 of this division.

(f) (Reserved)

(g) The requirements of this chapter do not apply to:

(1) (reserved);

(2) the owner or operator of a facility managing recyclable materials described in section 66261.6(a)(2)(B) of this division (except to the extent they are referred to in article 8 of chapter 16 of this division);

(3) a generator accumulating waste on-site in compliance with section 66262.34 of this division;

(4) a farmer disposing of waste pesticides from the farmer's own use in compliance with section 66262.70 of this division;

(5) (reserved);

(6) (reserved);

(7) (reserved);

(8)(A) except as provided in subsection (g)(8)(B) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

1. a discharge of a hazardous waste;

2. an imminent and substantial threat of a discharge of hazardous waste;

3. a discharge of a material which, when discharged, becomes a hazardous waste;

(B) an owner or operator of a facility otherwise regulated by this chapter shall comply with all applicable requirements of articles 3 and 4 of this chapter;

(C) any person who is covered by subsection (g)(8)(A) of this section and who continues or initiates hazardous waste treatment or containment activities

after the immediate response is over is subject to all applicable requirements of this chapter and chapter 21 of this division for those activities;

(D) In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition. For the purposes of this subsection, the term "military munitions" is as defined in 40 Code of Federal Regulations section 260.10. The requirements of this subsection apply only to military munitions that are regulated under the federal act, as defined in Health and Safety Code section 25115.1;

(9) a transporter storing manifested shipments of hazardous waste in containers at a transfer facility, or a transfer facility storing manifested shipments of hazardous waste in containers, for six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority, and meeting the requirements of sections 66262.30 and 66263.18;

(10) the addition of absorbent material to waste in a container (as defined in section 66260.10 of this division) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and sections 66264.17(b), 66264.171, and 66264.172 are complied with;

(11) persons managing hazardous waste in a hazardous waste management unit not subject to 40 CFR Code of Federal Regulations Part 264 (incorporated by reference in section 66260.11 of this division) pursuant to an exemption in 40 CFR Code of Federal Regulations Section 264.1(g), if the waste managed in that unit is identified as a hazardous waste solely because it exhibits the characteristic of toxicity set forth in section 66261.24(a)(1) of this division.

(12) Persons who manage universal waste. These persons are subject to regulation under chapter 23 when managing universal wastes listed in section 66261.9 of this division.

(h) The requirements of this chapter apply to owners or operators of all facilities that transfer, treat, store, or dispose of hazardous wastes referred to in chapter 18 of this division.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25159, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25115.1, 25118, 25141, 25159, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Code of Federal Regulations Sections 260.10 and 264.1.

Amend title 22, division 4.5, chapter 15, article 1, section 66265.1 to read:

§66265.1. Purpose, Scope, and Applicability.

(a) The purpose of this chapter is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in section 66265.1080(b), the standards of this chapter, and of article 15.5 of chapter 14 of this division, apply to owners and operators of facilities that transfer, treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under Health and Safety Code section 25200.5 and section 66270.10 of this division until either a permit is issued under Health and Safety Code section 25200 or until applicable closure and post-closure responsibilities specified in this chapter are fulfilled, and those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by 42 U.S.C. section 6930(a) and/or failed to file Part A of the permit application as required by section 66270.10(e) and (g). These standards apply to all transfer, treatment, storage and disposal of hazardous waste at these facilities, except as specifically provided otherwise in this chapter or chapters 11, 12 or 13 of this division.

(c) Notwithstanding subsection (b), no facility shall operate under interim status if the owner or operator has failed to file Part A of the permit application as required by section 66270.10(e) and (g). A facility operating under interim status shall not:

- (1) manage hazardous wastes which are not specified in Part A of the permit application;
- (2) employ processes not described in Part A of the permit application; or
- (3) exceed the design capacities specified in Part A of the permit application.

(d) The requirements of this chapter do not apply to:

(1) a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Federal Marine Protection, Research, and Sanctuaries Act (33 U.S.C. section 1401, et. seq). Such person shall comply with the requirements of this chapter when transferring, treating or storing hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in subsection (b) of this section;

(2) [reserved];

(3) the owner or operator of a POTW which transfers, treats, stores, or disposes of hazardous waste;

(4) [reserved];

(5) [reserved];

(6) the owner or operator of a facility managing recyclable materials described in section 66261.6(a)(2)(B) of this division (except to the extent they are referred to in article 8 of chapter 16 of this division);

(7) a generator accumulating waste on-site in compliance with section 66262.34 of this division, except to the extent the requirements are included in section 66262.34 of this division;

(8) a farmer disposing of waste pesticides from the farmer's own use in compliance with section 66262.70 of this division;

(9) [reserved];

(10) [reserved];

(11)(A) except as provided in subsection (d)(11)(B) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

1. a discharge of a hazardous waste;

2. an imminent and substantial threat of a discharge of a hazardous waste;

3. a discharge of a material which, when discharged, becomes a hazardous waste;

(B) an owner or operator of a facility otherwise regulated by this chapter shall comply with all applicable requirements of articles 3 and 4 of this chapter;

(C) any person who is covered by subsection (d)(11)(A) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter and chapter 21 of this division for those activities.

(D) In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition. For the purposes of this subsection, the term "military munitions" is as defined in 40 Code of Federal Regulations section 260.10. The requirements of this subsection apply only to military munitions that are regulated under the federal act, as defined in Health and Safety Code section 25115.1;

(12) a transporter storing manifested shipments of hazardous waste in containers at a transfer facility, or a transfer facility storing manifested shipments of hazardous waste in containers, for six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority, and meeting the requirements of sections 66262.30 and 66263.18;

(13) the addition of absorbent material to waste in a container (as defined in section 66260.10 of this division) or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and sections 66265.17(b), 66265.171, and 66265.172 are complied with;

(14) persons managing hazardous waste in a hazardous waste management unit not subject to 40 CFR Code of Federal Regulations Part 265 (incorporated by reference in section 66260.11 of this division) pursuant to an exemption in 40 CFR Code of Federal Regulations section 265.1(c), if the waste managed in that unit is identified as a hazardous waste solely because it exhibits the characteristic of toxicity set forth in section 66261.24(a)(1) of this division.

(15) Persons who manage universal waste. These persons are subject to regulation under chapter 23 when managing universal wastes listed in section 66261.9 of this division.

(e) The owner or operator of a facility under subsections (d)(1) through (3) of this section shall be subject to the requirements of chapter 14 of this division to the extent they are included in a permit granted to such a person under 40 CFR Code of Federal Regulations Part 122 or under Subchapter H (commencing with Part 220) of chapter I of 40 CFR Code of Federal Regulations.

(f) The following hazardous wastes shall not be managed at facilities subject to regulation under this chapter:

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

(A) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(B) the waste is stored in tanks or containers;

(C) the waste is stored or treated in waste piles that meet the requirements of section 66264.250(c) as well as all other applicable requirements of article 12 of this chapter;

(D) the waste is burned in incinerators that are certified pursuant to the standards and procedures in section 66265.352; or

(E) the waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in section 66265.383.

(g) The requirements of this chapter apply to owners or operators of all facilities which transfer, treat, store or dispose of hazardous waste referred to in chapter 18 of this division, and the chapter 18 standards are considered material conditions or requirements of the chapter 15 interim status standards.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25159, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25115.1, 25118, 25141, 25150, 25159, 25159.5, 25200.5, 25219, 25219.1 and 25219.2, Health and Safety Code; and 40 CFR Code of Federal Regulations Sections 260.10 and 265.1.

Adopt Title 22, division 4.5, chapter 17, section 66267.10 to read:

§ 66267.10. Definition of waste.

For purposes of sections 25200.10 and 25187 of the Health and Safety Code, a used or fired military munition is a waste, and, therefore, is potentially subject to corrective action authorities under sections 25200.10 and 25187 of the Health and Safety Code if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material shall be addressed. If remedial action is infeasible, the operator of the range shall maintain a record of the event for as long as any threat remains. The record shall include the type of munition and its location (to the extent the location is known). For the purposes of this section, the term "military munitions" is as defined in 40 Code of Federal Regulations section 260.10. The requirements of this section apply only to military munitions that are regulated under the federal act, as defined in Health and Safety Code section 25115.1.

Note: Authority cited: Sections 25150, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Section 25115.1 Health and Safety Code; and 40 Code of Federal Regulations Sections 260.10 and 266.202.

Amend title 22, division 4.5, chapter 20, article 1, section 66270.1 to read:

§66270.1. Purpose and Scope of These Regulations.

(a) Coverage.

(1) These permit regulations establish provisions for the issuance and administration of hazardous waste permits pursuant to chapter 6.5 of division 20 of the Health and Safety Code (commencing with section 25100).

(2) The regulations in this chapter cover basic permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements. These regulations are part of a regulatory scheme implementing chapter 6.5 (commencing with section 25100) of division 20 of the Health and Safety Code, set forth in different parts of Title 22, California Code of Regulations.

(3) Technical regulations. The permit program has separate additional regulations that contain technical requirements. These separate regulations are used by the Department to determine what requirements shall be placed in permits if they are issued. These separate regulations are located in chapters 14 and 16 of this division.

(b) Overview of the Permit Program. Not later than 90 days after the promulgation or revision of regulations in chapter 11 of this division, which result in a waste becoming subject to the requirements of this division, generators and transporters of that hazardous waste, and owners or operators of hazardous waste facilities that transfer, treat, store, or dispose of that waste shall file a notification of that activity under Health and Safety Code section 25153.6. After the promulgation of the chapter 11 regulations, transfer, treatment, storage or disposal of the newly regulated hazardous waste by any person who has not filed a notification with the Department and received a permit or grant of interim status is prohibited unless otherwise specifically authorized by the Department or another provision of this division. A permit application consists of two parts, Part A (see section 66270.13) and Part B (see section 66270.14 and applicable sections in sections 66270.15 through 66270.23). For “existing HWM facilities,” the requirement to submit an application is satisfied by submitting only Part A of the permit application until the date the Department sets for submitting Part B of the application. (Part A consists of Forms 1 and 3 of the Consolidated Permit Application Forms.) Timely submission of both notification under Health and Safety Code section 25153.6 and Part A qualifies owners and operators of existing HWM facilities (who are required to have a permit) for interim status under section 25200.5 of the Health and Safety Code. Facility owners and operators with interim status are treated as having been issued a permit until the Department makes a final determination on the permit application. Facility owners and operators with interim status shall comply with interim status standards set forth in chapter 15 of this division. For existing HWM facilities, the Department shall set a date, giving at least 60 days notice, for submission of Part B of the application.

There is no form for Part B of the application; rather, Part B shall be submitted in narrative form and contain the information set forth in the applicable

sections of sections 66270.14 through 66270.23. Owners or operators of new HWM facilities shall submit Parts A and B of the permit application at least 180 days before physical construction is expected to commence.

(c) Scope of the Permit Requirements. A permit is required for the “transfer,” “treatment,” “storage,” and “disposal” of any waste which is hazardous waste pursuant to section 66261.3. The terms “transfer,” “treatment,” “storage,” “disposal,” and “hazardous waste” are defined in section 66260.10. Owners and operators of hazardous waste management units shall have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to section 66265.115) after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal as provided under subsections (c)(5) and (6) of this section. If a post-closure permit is required, the permit shall address applicable chapter 14 Water Quality Monitoring, Environmental Monitoring, Corrective Action, and Post-closure Care Requirements of this division. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste facility permits as well as permits under other programs for certain aspects of the facility operation. Permits are required for:

(A) injection wells that dispose of hazardous waste, and associated surface facilities that transfer, treat, store or dispose of hazardous waste;

(B) transfer, treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit.

However, the owner or operator of a publicly owned treatment works receiving hazardous waste shall be deemed to have a permit for treatment of that waste if the owner or operator complies with the requirements of section 66270.60(d)(1).

(C) barges or vessels that dispose of hazardous waste by ocean disposal. However, the owner or operator shall be deemed to have a permit for ocean disposal from the barge or vessel if the owner or operator complies with the requirements of section 66270.60(d)(2).

(D) treatment of hazardous wastes using a Transportable Treatment Unit (TTU). However, the owner or operator of a transportable treatment unit (TTU) shall be deemed to have a permit to operate the TTU when the owner or operator submits completed TTU notifications as specified in Section 67450.2(a) and 67450.3(a)(3) and receives acknowledgements from the Department authorizing operation of the TTU pursuant to sections 67450.2(a)(3) and 67450.3(b).

(E) treatment of hazardous wastes using a Fixed Treatment Unit (FTU). However, the owner or operator of a fixed treatment unit (FTU) shall be deemed to have a permit to operate the FTU when the owner or operator submits a completed FTU facility-specific notification as specified in Section 67450.2(b) and receives an acknowledgement from CUPA or authorized agency authorizing operation of the FTU pursuant to section 67450.2(b)(5).

(F) operation of a temporary household hazardous waste collection facility (THHWCF). However, the operator of a THHWCF shall be deemed to have a permit to operate the THHWCF when the operator submits a completed THHWCF notification as specified in Section 66270.60(d)(5)(A).

(2) Specific exclusions. The following persons are among those who are not required to obtain a permit:

(A) generators who accumulate hazardous waste on-site without meeting the definition of a storage facility set forth in Health and Safety Code Section 25123.3.

(B) farmers who dispose of hazardous waste pesticides from their own use as provided in section 66262.70;

(C) transporters storing manifested shipments of hazardous waste in containers at a transfer facility, and transfer facilities storing manifested shipments of hazardous waste in containers, for six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority, and meeting the requirements of sections 66262.30 and 66263.18;

(D) persons adding absorbent material to waste in a container (as defined in section 66260.10 of this division) and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and sections 66264.17(b), 66264.171, and 66264.172 of this division are complied with.

(E) Persons who manage universal waste. These persons are subject to regulation under chapter 23 when managing universal wastes listed in section 66261.9 of this division.

(3) Further exclusions.

(A) A person is not required to obtain a permit for treatment or containment activities which are necessary to perform an immediate response to any of the following situations:

1. a discharge of a hazardous waste;
2. an imminent and substantial threat of a discharge of hazardous waste;
3. a discharge of a material which, when discharged, becomes a hazardous waste.

(B) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(C) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition. For the purposes of this subsection, the term "military munitions" is as defined in 40 Code of Federal Regulations section 260.10. The requirements of this subsection apply only to military munitions that are regulated under the federal act, as defined in Health and Safety Code section 25115.1;

(4) Permits for less than an entire facility. The Department may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for

which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under the standards of chapter 15 of this division shall obtain a post-closure permit unless they can demonstrate to the Department that the closure met the standards for closure-by-removal or decontamination in sections 66264.228, 66264.280(e), or 66264.258, respectively. The demonstration may be made in the following ways:

(A) if the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that the closure-by-removal or decontamination standards of chapter 14 of this division were met. If the Department believes that the chapter 14 standards were met, the Department will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (c)(6) of this section.

(B) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Department for a determination that a post-closure permit is not required because the closure met the applicable closure-by-removal or decontamination standards of chapter 14 of this division.

1. The petition shall include data demonstrating that the applicable chapter 14 closure-by-removal or decontamination standards were met.

2. The Department shall approve or deny the petition according to the procedures outlined in subsection (c)(6) of this section.

(6) Procedures for closure equivalency determination.

(A) If a facility owner/operator seeks an equivalency demonstration under section 66270.1(c)(5), the Department shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Department shall also, in response to a request or at the Department's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the closure under chapter 15 of this division to a closure-by-removal or decontamination under chapter 14 of this division. The Department shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(B) The Department shall determine whether the closure under chapter 15 of this division met the closure-by-removal or decontamination requirements of chapter 14 of this division within 90 days of receipt of a petition requesting a closure equivalency determination. If the Department finds that the closure did not meet the applicable chapter 14 standards, the Department shall provide the owner/operator with a written statement of the reasons why the closure failed to meet chapter 14 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after

receiving such written statement. The Department shall review any additional information submitted and make a final determination within 60 days.

(C) If the Department determines that the facility did not close in accordance with the closure-by-removal or decontamination standards of chapter 14 of this division, the facility is subject to post-closure permitting requirements.

(d) Where waste discharge requirements are established pursuant to sections 13260 and 13263 of the Water Code, they shall be incorporated as a condition of the Hazardous Waste Facility Permit issued to the applicant pursuant to this chapter to the extent the Department determines the waste discharge requirements are not less stringent than this division or chapter 6.5 of division 20 of the Health and Safety Code. The Department may establish in the permit more stringent requirements which the Department determines are necessary or appropriate to carry out this division of chapter 6.5 of division 20 of the Health and Safety Code.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25159, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25115.1, 25118, 25141, 25159, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Code of Federal Regulations Sections 260.10 and 270.1.