

**Attachment to Economic and Fiscal Impact Statement (STD. 399)
Federal Post-Closure Rule Regulations, Addition of Enforceable Documents and
Flexibility for Closure and Postclosure Requirements
Department of Toxic Substances Control Reference Number R-2017-02**

Introduction:

Existing law requires the owner or operator of a hazardous waste facility to submit hazardous waste facility closure and postclosure plans to the Department of Toxic Substances Control (DTSC) and to the California Regional Water Quality Control Board. Prior law required DTSC to review those plans and to approve a plan if DTSC finds that the plan complies with the regulations adopted by DTSC and all other applicable federal and state regulations. Existing law requires DTSC to impose the requirements of a hazardous waste facility postclosure plan on the owner or operator of a facility through the issuance of a postclosure permit, or, only until January 1, 2009, through an enforcement order or an enforceable document, except as specified.

Senate Bill No. 1325 (de León), approved by Governor Brown and filed with Secretary of State on September 26, 2016, amended Section 25247 of the Health and Safety Code. This Senate Bill restores the authority of DTSC to impose postclosure requirements through an enforcement order or an enforceable document and requires DTSC, on or before January 1, 2018, to adopt regulations to impose postclosure plan requirements.

The proposed draft rulemaking incorporates select text and concepts based on the Federal Post-Closure Rule of 1998. The proposed rule will provide flexibility for DTSC to use enforceable documents to authorize hazardous waste postclosure activities at hazardous waste facilities subject to postclosure care.

The proposed regulations would make the following revisions:

Allow DTSC use of enforceable documents in lieu of proposed and existing postclosure permits at Hazardous Waste Facilities with waste left in place. The proposed rulemaking would provide flexibility for DTSC to use enforceable documents such as agreements or orders at facilities with hazardous waste left in place that need or already have a hazardous waste postclosure facility permit. The rule allows the use of alternative mechanisms, such as an order, a plan or other document issued consistent with a corrective action order or a remedial action order issued pursuant to Health and Safety Code sections 25187 or 25355.5(a)(1)(B). The ability to use enforceable documents provides flexibility and allows DTSC to use the appropriate authority available at all facilities. DTSC believes this approach will provide environmental results and eliminate redundant processes.

The proposed regulation is not “broader in scope” than a federal requirement and would not impede the scope of EPA’s enforcement at permitted or previously permitted facilities. The ability to use an alternative enforcement mechanism, rather than a

permit, is not a State requirement that “increase(s) the size of the regulated community or universe of waste beyond what is covered by the federal program through either directly enforceable (i.e., independent) requirements or certain conditions for exclusion.” (See, EPA OSWER Doc: Determining Whether State Hazardous Waste Requirements are More Stringent or Broader in Scope than the Federal RCRA Program (12/23/2014).)

For postclosure care, the requirement to conduct postclosure care does not lapse until the facility clean closes or removes all contamination at the facility. Any expiration of a permit or State failure to issue a permit is irrelevant. EPA retains authority to initiate an enforcement action or issue a new permit pursuant to 40 C.F.R. section 270.51(c). (See also, EPA OSWER Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA.) In short, DTSC is simply seeking a means of adding a legally permissible remedy for addressing environmental problems already sanctioned in the Federal Post-Closure Rule.

DTSC uses alternative enforcement mechanisms at these sites for a number of reasons including our ability to address non-RCRA releases, seek cost recovery, and compelling other responsible parties, such as generators to carry out response or remedial activities. In these cases, DTSC has made the decision that alternative enforcement mechanisms and statutory authorities are the preferred tool to seek superior environmental outcomes. DTSC is seeking to remove the redundant process of a postclosure permit that would be exclusively an administrative activity. In all these cases, the RCRA permitting requirements would not be terminated, but deferred while DTSC pursues response actions under enforcement or other authorities. This is analogous to the actions that EPA takes at Superfund sites. DTSC is aware of other states that have applied the alternative enforcement mechanism to facilities that previously had a permit.

Current Status: DTSC will hold a public workshop and public hearing at the Sacramento DTSC Regional Office, located at 8800 Cal Center Drive, in Sacramento, California. A webinar of the workshop and a webcast of the hearing will be available. DTSC will develop regulatory revisions based on the meeting comments.

Private Sector Costs and Benefits:

Pursuant to the proposed regulations, DTSC is allowed flexibility to issue an enforcement mechanism in lieu of a postclosure permit as long as the enforcement mechanism is adequately protective of human health and the environment, and the federal and state requirements, including this new rule are met. Costs of managing waste in place at each facility varies. Facilities currently subject to hazardous waste permitting requirements are regulated by DTSC. Most, if not all, facilities where the proposed regulations could be applied have been documented by DTSC and DTSC anticipates minimal costs of implementing the proposed regulations.

The number of hazardous waste owners/operators affected by the proposed regulation is small, approximately 21 facilities. Although the total fiscal impact to facilities is

unknown, a small cost savings is possible due to fewer required administrative activities associated with orders relative to permits.

Fiscal Impacts to Government:

The proposed regulations do not affect local nor federal agencies. DTSC currently has sole oversight responsibility for all facilities subject to the proposed regulations and is the only state agency affected by the proposal. Increased workload for preparation and oversight of orders and enforceable documents would be offset by the reduction in permitting activities at land disposal sites. DTSC anticipates approximately 21 postclosure care sites are candidates to be affected by this rule. The result would be an increase in DTSC enforcement-document-issuance revenue offset by the reduction of permit reviews yielding a net neutral cost. Actual change to DTSC workload and costs are expected to be minimal as workload is anticipated to be transferred from one program to another.