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Department of Toxic Substances Control

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Edmund G. Brown Jr.
Governor

TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

Department Reference Number: **R-2016-03**

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to adopt new or amended California Code of Regulations, Title 22, Division 4.5, Chapters 10, 14, 15, 20, and 21, sections 66260.10, 66264.16, 66264.101, 66264.143, 66264.144, 66264.145, 66264.146, 66264.147, 66264.151, 66265.16, 66265.143, 66265.144, 66265.145, 66265.146, 66265.147, 66270.14, 66271.50, 66271.51, 66271.52, 66271.53, 66271.54, 66271.55, 66271.56, 66271.57, and 66271.58.

PUBLIC HEARING

DTSC will hold one public hearing on the proposed regulation at the following time and location:

DATE: November 6, 2017
TIME: 9:30 AM (PST)
LOCATION: Cal/EPA Headquarters, Coastal Hearing Room
1001 "I" Street
Sacramento, California 95814

At the time and location listed above, any person(s) may present statements or arguments, orally or in writing, relevant to this proposal described in the Informative Digest. The public hearing will convene at 9:30 a.m. and will remain open until 11:30 a.m., or until no attendees present testimony, whichever occurs first.

Representatives of DTSC will preside at the hearing. DTSC requests persons who wish to speak to please register before the hearing. Pre-hearing registration is conducted at the location of the hearing from 9:00 a.m. until the hearing commences. Registered

persons will be heard in the order of their registration. Anyone else wishing to speak at the hearing will have an opportunity after all registered persons have been heard.

All visitors are required to sign in prior to attending any meeting at the Visitor and Environmental Services Center located just inside and to the left of the building's public entrance. Please allow adequate time to sign in and receive a visitor badge before the public hearing begins.

NOTICE PERTAINING TO ACCESSIBILITY & REASONABLE ACCOMMODATION

All documents related to this regulation can be made available in alternate format (*i.e.* Braille, large print, etc.) or in another language, as requested, in accordance with State and Federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability related reasonable accommodations and/or translator/interpreter needs, upon request. For assistance, please contact **Litiana Patino at (916) 324-3095** or Litiana.Patino@dtsc.ca.gov as soon as possible, but no later than 10 business days prior to the scheduled hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

WRITTEN COMMENT PERIOD

Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard-copy formats.

Written comments may be submitted electronically through the DTSC regulations email address at regs@dtsc.ca.gov (or for this regulation specifically, at permits_hwm@dtsc.ca.gov); or please direct hard-copy written comments to:

Ms. Jackie Buttle, Regulations Coordinator
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806
Fax Number: (916) 255-3785

The written comment period will close at 11:59 p.m. PST on November 6, 2017. Only comments received at the DTSC office by that date and time will be considered.

AUTHORITY & REFERENCE

Authority

These regulations are being adopted under the following authorities:

- Health and Safety Code section 25200.21 requires DTSC to adopt regulations establishing or updating criteria for use in making permit decisions.

- Health and Safety Code section 25150 stipulates that DTSC shall adopt, and revise when appropriate, standards and regulations for the management of hazardous substances;
- Health and Safety Code section 25159.5 authorizes DTSC to adopt regulations which are more stringent or more extensive than a federal regulation.
- Health and Safety Code section 25245 authorizes and requires DTSC to adopt regulations that specify financial assurance to be provided by facility owners or operators and ensure that hazardous waste facilities can be closed and maintained for at least 30 years in a manner that is protective of public health and the environment and minimizes or eliminates the escape of hazardous constituents from the facility.
- Health and Safety Code section 58004 authorizes DTSC to take any of the actions that its predecessor agency, the Department of Health Services could take. Implicitly, this includes the authority to adopt regulations.
- Health and Safety Code section 58012 grants DTSC authority to adopt and enforce rules and regulations to execute its duties. (Added by Governor's Reorganization Plan No. 1, section 146, eff. July 17, 1991. See http://www.dtsc.ca.gov/LawsRegsPolicies/upload/OEARA_REG_GRP1.pdf)

Reference

These regulations implement, interpret, or make specific the following statutes:

- Health and Safety Code section 25200.21 authorizes and requires DTSC to adopt regulations establishing or updating criteria used for the issuance of a new or modified permit or renewal of a permit, which may include criteria for the denial or suspension of a permit.

Note: These proposed regulations are also include amendments to existing regulations. There are additional existing authority and reference citations for those provisions in the existing and proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Policy Statement Overview

Health and Safety Code section 25200.21 was enacted as part of Senate Bill 673 (SB 673, Stats. 2015, Chapter 611, section 1, effective January 1, 2016). Section 25200.21 authorizes and requires DTSC to adopt regulations establishing or updating criteria used for the issuance of a new or modified permit, which may include criteria for the denial or suspension of a permit. In adopting these safeguards, DTSC must consider for inclusion as criteria all of the following:

- Number and types of past violations that would result in denial;
- The vulnerability of, and existing health risks to, nearby populations, including cumulative impacts;
- Minimum setback distances from sensitive receptors (e.g. schools, hospitals, elder care facilities, etc.)
- Evidence of financial responsibility and qualifications of ownership;

- Provision of financial assurances pursuant to Health and Safety Code section 25200.1;
- Training of personnel in the safety culture and plans; and
- Completion of a health risk assessment.

DTSC's Permitting Division considers and issues decisions on applications for hazardous waste facility permits. In general, facilities that treat, store, or dispose of hazardous waste in California are required to have a hazardous waste facility permit issued by DTSC. These permits authorize the facilities' activities, while also imposing conditions on facilities' operations. Compliance with such conditions is subject to inspection and other forms of review by DTSC's enforcement program. DTSC's enforcement program conducts inspections to ensure compliance with hazardous waste management requirements.

DTSC's permitting program is the bedrock of its regulatory oversight of facilities that treat, store, or dispose of hazardous waste. The principal purpose of DTSC's permitting program is to ensure that those entities operate safely for facility personnel and nearby residents, and in a manner that protects human health and the environment. DTSC's Permitting Division imposes permit conditions to prevent and control releases of harmful substances from a facility to air, water, or soil.

Proposed regulation

Health and Safety Code section 25200.21 specifies the seven criteria that DTSC must consider for inclusion in the proposed regulations to modify the decision-making process for the issuance of hazardous waste facility permits. Five of the seven criteria are being addressed in this rulemaking package. These include permit criteria for compliance history (or the Violations Scoring Procedure), data for a community involvement profile, financial responsibility amendments, training for facility personnel amendments, and a health risk assessment for hazardous waste facility operations.

The remaining criteria: the vulnerability of and existing health risks to, nearby populations and the minimum setback distances from sensitive receptors (e.g. schools, hospitals, elder care facilities, etc.) will be addressed in a separate rulemaking package. DTSC has already initiated public outreach and engagement for the second rulemaking effort.

Anticipated Benefits

DTSC estimates the benefits from the proposed rulemaking are greater protection of facility personnel and nearby residents from the improvement of facility personnel training requirements; greater protection of public funds due to improvements in the requirements for financial assurance for liability, closure and postclosure care of facilities; greater understanding and protection of potentially vulnerable populations near hazardous waste facilities informed by a community involvement profile and health risk assessment; and greater consistency and transparency in DTSC's permit program decision-making from the newly-established Violations Scoring Procedure. Collectively, these regulations are expected to afford greater protection of public health and safety and the environment in California.

Summary of Existing Statues and Regulations

Health and Safety Code section 25200.21 authorizes and requires DTSC to adopt regulations related to its permitting program. That provision is discussed at length in the above Policy Statement Overview section of this document. The Health and Safety Code also sets out a basic framework and basic requirements for hazardous waste management in California. Those provisions are set out in the Hazardous Waste Control Law, Division 20, Chapter 6.5, Health and Safety Code. In addition, DTSC has a very extensive and comprehensive body of regulations that govern virtually all aspects of the generation, management, treatment, storage, and disposal of hazardous waste in California. Key components of those regulations are the provisions that govern the hazardous waste facility permitting process. Those regulations are primarily found in Chapters 20 and 21 of the regulations implemented by DTSC, within Division 4.5 of Title 22, California Code of Regulations.

Relation to Existing Federal Regulations

The existing body of regulations that DTSC implements, set out in Title 22, California Code of Regulations, Division 4.5, has a federal corollary in Title 40, Code of Federal Regulations. In fact, DTSC is authorized by the United States Environmental Protection Agency (U.S. EPA) to enforce DTSC's hazardous waste management program in lieu of the federal hazardous waste management program (The Resource Conservation and Recovery Act, "RCRA," commencing at Title 42, United States Code, section 6901.) in California. There are no provisions in the federal regulations implementing RCRA that are analogous to the provisions being proposed by DTSC. Nonetheless, RCRA expressly allows states that implement their hazardous waste management programs in lieu of RCRA to be more stringent, broader in scope, or both. The proposed regulations will neither duplicate nor conflict with existing federal regulations.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

DTSC has evaluated whether or not the proposed regulations are inconsistent or incompatible with existing state regulations. DTSC is the only agency that regulates and governs hazardous waste management in general and the permitting of hazardous waste facilities in particular. The proposed regulations build on these existing regulations by making improvements to the requirements related to training of facility personnel, financial assurances for liability, closure, and postclosure care, and the permitting decision-making process. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Incorporated By Reference

The regulations do not include any items incorporated by reference.

DISCLOSURE REGARDING THE PROPOSED ACTION

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC determined that the proposed changes to these regulations would 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 STATE OR LOCAL AGENCIES, OR SCHOOL DISTRICTS
SUBJECT TO REIMBURSEMENT*

DTSC has determined that the proposed regulations would not result in costs or savings for any state or local agency, or school district that is required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code. The proposed regulations are not anticipated to result in any other nondiscretionary costs or savings imposed on local agencies or change any federal funding to the State.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

DTSC does not anticipate any changes to federal funds that the State of California receives.

DETERMINATION OF NO SIGNIFICANT STATEWIDE ECONOMIC IMPACT

DTSC has made an initial determination found through the economic impact assessment that the proposed regulations would not have any significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DTSC is not aware of any cost impacts that a representative private person would necessarily incur with the proposed action. DTSC anticipates that owners and operators would incur yearly costs between \$4,000 and \$5,500 in reasonable compliance with the proposed requirements. Furthermore, when permit application are submitted, the range of additional direct costs that a representative business would necessarily incur is between \$64,000 and \$117,500 every ten years when permits expire.

EFFECT ON SMALL BUSINESSES

DTSC has determined that the regulation would have an impact on small businesses that are owners and/or operators of hazardous waste facilities. The proposed regulations would require small business to incur additional costs associated with preparing and submitting hazardous waste facility permit applications as well as yearly costs to submit training certifications and review their Violations Scoring Procedure score. Generally speaking, the proposed regulations would not have a significant economic impact on small businesses. However, those small businesses with a pattern of violating hazardous waste laws and regulations may experience a significant economic impact.

EFFECT ON HOUSING COSTS

DTSC has determined that the proposed regulations would not have any impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

DTSC has conducted an economic impact assessment, as required by Government Code section 11346.3, and found that no businesses or jobs would be created, expanded, or eliminated in California as a result of the proposed regulations. The

rulemaking does, however, aim to increase the safety of hazardous waste management facility operations, which helps to protect public health and safety and the environment.

CONSIDERATION OF ALTERNATIVES

Recently, prior to the rulemaking, DTSC held two public workshops. One was held in southern California, and one in northern California. Last year, DTSC held several workshops on one provision of the rulemaking—the Violations Scoring Procedure. DTSC has considered the information gleaned in those workshops and from internal discussions with DTSC staff in the drafting of these regulations.

A detailed discussion of the proposed regulations, including the Consideration of Alternatives, is presented in the Initial Statement of Reasons for these regulations—Hazardous Waste Facility Permitting Criteria.

Pursuant to Government Code section 11346.5(a)(13), DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking to be an exempt General Rule (CEQA Guidelines, section 15061(b)(3) under the California Environmental Quality Act (Public Resources Code section 21000 et. seq.). This rulemaking meets the statutory exemption available under Public Resources Code section 21080(b)(8). 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.

CONTACTS

Inquiries regarding technical aspects of the proposed regulation may be directed to Evelia Rodriguez at (916) 327-6104 or at evelia.rodriguez@dtsc.ca.gov. If Ms. Rodriguez is not available, contact the Regulations Coordinator, Ms. Jackie Buttle at (916) 255-3730 or regs@dtsc.ca.gov. However, such oral inquiries are not part of the official rulemaking record.

A 45-day public comment period for this rulemaking file, as described above, will commence on September 22, 2017 and close on November 6, 2017 at 11:59 p.m. PST. During this time, DTSC will accept statements, arguments, or contentions and/or supporting documents regarding this rulemaking that must be submitted in writing, or may be presented orally or in writing at the public hearing. Comments must be received by the deadline in order for them to be considered before DTSC adopts, amends, or repeals these regulations.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS and INITIAL STATEMENT OF REASONS

Copies of the Notice of Proposed Action, Initial Statement of Reasons, the text of the proposed regulations, all the information upon which its proposal is based, and the express terms of the proposed regulation are posted to DTSC's Internet site at: <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm> or may be obtained from Jackie Buttle of DTSC's Office of Planning and Environmental Analysis, as specified below.

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

Once the regulation has been adopted, DTSC prepares a Final Statement of Reasons which includes an update the Initial Statement of Reasons, DTSC's summaries and responses to all timely public comments, and includes other materials required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Jackie Buttle at the address listed below. A copy of the Final Statement of Reasons along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation will also be posted on DTSC's Internet site at: <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>

To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <http://www.dtsc.ca.gov/ContactDTSC/ELists.cfm> and subscribe to the Permit Decision Criteria - SB 673 eList, or to directly subscribe, email: regs@dtsc.ca.gov.

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

Ms. Jackie Buttle
Regulations Coordinator
Office of Planning and Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Email address: permits_hwm@dtsc.ca.gov

Fax number: (916) 255-3785

Phone number: (916) 255-3730

If Ms. Buttle is unavailable, please call Ms. Evelia Rodriguez at (916) 327-6104.