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TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

Facilities Annual Reporting Requirements

Department Reference Number: R-2011-01

Office of Administrative Law Notice File Number: Z-2012-1113-03

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations, title 22, division 4.5, sections 66264.73, 66264.75, and 66264.77 of chapter 14; sections 66265.73, 66265.75, 66265.77, and 66265.714 of chapter 15; and sections 66270.30 and 66270.60 of chapter 20. In addition, DTSC proposes to adopt sections 66264.73.5 and 66265.73.5.

PUBLIC HEARING

A written comment period will commence starting on November 23, 2012 and closing on **January 7, 2013**. DTSC has not scheduled a public hearing on the proposed regulation. However, pursuant to Government Code section 11346.8, any interested person or his or her duly authorized representative may request a hearing, no later than December 23, 2012. Please submit written comments on this proposal to the contact person listed at the end of this notice no later than 5:00 p.m. on January 7, 2013. Comments submitted after this time will not be considered.

Notice to Hearing Impaired - Accessibility. If you have special accommodation or language needs, please contact Reasonable Accommodation Coordinator, Adrian Recio, at (916) 324-3095 or by e-mail at arecio@dtsc.ca.gov as soon as you read this document. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

AUTHORITY AND REFERENCE

This regulation is being proposed under the following authorities:

Health and Safety Code section **25150**. This section grants DTSC authority to adopt standards regarding the management of hazardous waste.

Health and Safety Code section **25159**. This section grants DTSC authority to adopt and revise regulations allowing the state to maintain authorization to administer a state hazardous waste program in lieu of the federal program under the Resource Conservation Recovery Act (RCRA).

Health and Safety Code section **25159.5** grants DTSC authority to adopt and revise regulations that conform with corresponding federal regulations by the U.S. EPA that are at least equivalent to and consistent with the federal rules.

Health and Safety Code section **58012** (Added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991). This section grants DTSC authority to adopt regulations to execute its duties.

These regulations are based on, but are not identical to, the following federal regulations: Title 40 of the Code of Federal Regulations (CFR) Sections 264.75, 264.77, 265.75, 265.77, 270.30, 270.60.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Policy Statement Overview

California regulations require owners and/or operators of hazardous waste Treatment, Storage and Disposal Facilities (TSDF) to annually report specific information on the hazardous wastes handled each year and to describe the efforts undertaken during the year to reduce the volume and toxicity of waste generated in what is called the “annual report” (California Code of Regulations (CCR), title 22, division 4.5, chapter 14, section 66264.75 and chapter 15, section 66265.75). In the annual report, hazardous waste facilities provide the following data: 1) the Resource Conservation and Recovery Act (RCRA) and non-RCRA hazardous waste codes and quantities handled; 2) the method of transfer, treatment, storage or disposal for each waste; 3) closure and post-closure cost estimates; 4) environmental monitoring data; and 5) the certification of recycling, incineration or shipment out-of-state for high British thermal unit (BTU) or Volatile Organic Compound (VOC) waste. Sections 66264.75 and 66265.75 require hazardous waste facilities to submit a state annual report to Department of Toxic Substances (DTSC) by March 1st. The purpose of the data collection was to gain a better understanding of hazardous waste generation and management.

The annual reports are submitted either in electronic form (e.g., CD) or on paper forms. Some facilities use software (BRState) to compile the reports; however the software is difficult to use and often facilities submit paper forms to DTSC. DTSC staff uploads the electronic copies of the report and compiles the information into a database called the Annual Facility Report (AFR) database. For the paper copies, DTSC has to manually enter information from the reports into the BRState software. Once entered, the software performs error checks which may require facilities to resubmit data to correct the problems. DTSC also stores the paper copies of the report.

Most of the information provided in the annual reports is available to DTSC through the manifest system which DTSC developed called the Hazardous Waste Tracking System (HWTS) to store and analyze information from all manifests utilized in California. Approximately 100,000 manifests are used in California annually. HWTS is publically

available on a DTSC website - http://hwts.dtsc.ca.gov/report_list.cfm. The manifest database provides tools to investigate and compile hazardous waste generation and disposal information. Through the HWTS system, DTSC is able to gather and evaluate detailed information for hazardous waste facilities.

Although most of the information gathered from the annual report is duplicated within the HWTS, a small portion is not. For Off-Site facilities (accept waste from other generators), the annual report data is essentially a reiteration of the manifest data in summary form. For on-site facilities (manage only their own generated waste), the annual report data is a summary of the manifest data with one twist, the waste is grouped by the activity that generated the waste (e.g. fleet maintenance, or part degreasing). Although this information could be valuable, it is only gathered for this very small subset of generators; it is not reported on the manifests. It would be very difficult and potentially misleading to utilize this information to make inferences about overall generator behavior given the very small sample size.

The annual report data also presents a partial summary of waste shipped out-of-state, since waste shipped directly from a generator to an out-of-state facility would not be captured. The HWTS captures detailed information from each manifest regardless of final destination. Due to the summary nature of the annual report data and only partial capture of out-of-state waste shipments, the HWTS is a much more versatile tool to investigate and compile hazardous waste generation and disposal information.

In addition to California requirements, federal regulations require hazardous waste facilities to submit the federal biennial report every other year (40 Code of Federal Regulations sections 264.75 and 265.75). This report describes their hazardous waste management activities for the previous calendar year. The biennial report requires facilities to provide the following information: 1) a description and the quantity of each hazardous waste the facility received during the year; 2) the method of treatment, storage, or disposal for each hazardous waste; 3) the most recent closure cost estimate or the most recent post-closure cost estimate for disposal facilities; 4) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and 5) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years. DTSC compiles the information collected from the biennial reports and submits it to U.S. EPA, where it is made publicly available to the regulated community and other interested stakeholders.

The annual report requirements in the California regulations (22 CCR sections 66264.75 and 66265.75) are more stringent than the federal requirements because facilities are required to submit reports annually. Federal law allows state hazardous waste programs to be more stringent than the federal requirements as long as they are consistent with federal rules. Health and Safety Code section 25159 grants DTSC authority to adopt and revise regulations that allows California to maintain authorization from U.S. EPA to administer its state hazardous waste program in lieu of the federal RCRA program. However, the federal biennial report contains many of the same or similar reporting requirements as the annual report. For the years when the federal biennial report is required, DTSC has accepted the biennial report as fulfilling the requirement for the annual report.

The proposed regulations retain the existing requirements to annually submit environmental monitoring data, which is more stringent than the federal requirements. For the environmental monitoring data, the proposed regulations clarify the environmental monitoring data that needs be submitted and results in a small reduction in the existing requirements. DTSC determined that retaining this submission was vital to the oversight of hazardous waste facilities.

DTSC proposes to amend the annual report requirements in its regulations to reduce the reporting frequency to biennial, which will more closely align California reporting requirements with the RCRA federal regulations. In 1985, when DTSC implemented the annual report requirements, it created more stringent reporting requirements than the corresponding federal regulations in order to gain a better understanding of hazardous waste generation and management. After collecting and analyzing hazardous waste generator and disposal information in California over the past twenty years, DTSC now has a comprehensive understanding and no longer requires as much information as it did in the past. Additionally, much of the information gathered from the annual report is duplicative because similar data is contained in the HWTS. Proposed regulations will still require certain facilities to submit annual environmental monitoring data that they have in their operating records. DTSC uses this data when evaluating the operations of the protective system used at the TSDFs. However, reporting requirements will be less burdensome for the facility owner/operators and will allow DTSC to redirect staff that allocate time to process and manage the annual report data to work on other high priority projects. Furthermore, eliminating the annual report will not diminish DTSC's ability to protect public health and the environment from the harmful effects of hazardous waste.

Existing Laws and Regulations

Health and Safety Code section 25159 grants DTSC authority to adopt and revise regulations that allows California to maintain authorization from U.S. EPA to administer its state hazardous waste program in lieu of the federal RCRA program.

California law includes both "RCRA hazardous wastes" and "non-RCRA hazardous waste" in the regulation of hazardous waste (Health and Safety Code section 25120.2). The term "RCRA hazardous wastes" refers to hazardous wastes that are regulated as hazardous wastes under RCRA. The term "non-RCRA hazardous wastes" refers to those wastes that are regulated as hazardous wastes (RCRA-exempt and California-only) pursuant to the state's authority as listed in California's Health and Safety Code, but are not regulated as hazardous wastes by the federal government (Health and Safety Code section 25117.9).

Section 66264.75 requires owners or operators of hazardous TSDFs to submit annual reports to DTSC. Section 66265.75 requires owners or operators of hazardous waste facilities operating pursuant to interim status to submit annual reports to DTSC. The annual report is required to include but is not limited to the following information: 1) RCRA and non-RCRA hazardous waste codes and quantities handled; 2) the method of transfer, treatment, storage or disposal for each waste; 3) closure and post-closure cost estimates; 4) environmental monitoring data; and 5) the certification of recycling, incineration or shipment out-of-state for high BTU or VOC waste.

Sections 66264.73 and 66265.73 require owners or operators of hazardous TSDFs to keep a written operating record at the facility and to include and maintain all required

environmental monitoring, testing, or analytical data. Such environmental monitoring, testing and data includes but is not limited to the requirement to record the amount of liquids contained in leak detection sumps (sections 66264.226, 66264.254, 66264.303, 66265.226, 66265.260 and 66265.304), to include a map depicting the location and type of hazardous waste disposed in each cell in a landfill unit (66264.309 and 66265.309), and other required monitoring, analysis, inspection, response as required in sections 66264.602, 66265.714 and applicable article 6 regulations.

Relation to Existing Federal Regulations

Existing federal Resource Conservation and Recovery Act (RCRA) sections 3002 and 3004 and Title 40 of the Code of Federal Regulations (CFR) sections 264.75 and 265.75 require owners and operators of hazardous waste Treatment, Storage and Disposal Facilities (TSDF) to submit Biennial Reports to the U.S. EPA. This report describes their hazardous waste management activities for the previous calendar year.

The proposed regulations will reduce reporting frequency of owners and operators of hazardous waste TSDFs in California to become equivalent to federal rule, rather than being more stringent. The rulemaking will neither duplicate nor conflict with the federal regulations as California has received state authorization from U.S. EPA to implement and enforce its hazardous waste regulations that act in lieu of federal regulations.

Relation to Existing State Regulations

The proposed regulation is not inconsistent or incompatible with any existing state regulations. An automated search of Title 22 using the following keywords “annual report” and “biennial report” was conducted via Westlaw and yielded no conflicting state regulations.

CONSIDERATION OF ALTERNATIVES

Chosen Alternative: DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC 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.

Rejected Alternatives:

1. Do Nothing

DTSC considered this option because it avoids the cost of amending a regulation and continues the uninterrupted collection of facility data, which might be found valuable in the future for programmatic use. This option would require DTSC to continue to dedicate resources towards managing the annual report data, instead of using resources for other high priority projects. It also continues to impose a cost of compliance in the range of \$3,000 to \$6,000 per each of approximately 100 facilities to prepare the report. This alternative was rejected because 1) the data gathered in the annual report are largely duplicative of the information already publicly available from the manifest database, 2) DTSC uses HWTS data for programmatic analyses, and 3) the costs to TSDFs of \$300,000 to \$600,000 to gather/process the information were determined to be too high for data that might be useful in the future.

2. Reduce required data

DTSC also considered an option to continue the annual report but reduce the information reported to only include the data that was not duplicated on the manifest. The data would be gathered only from on-site facilities (which manage only their own waste) and would require the waste generation data to be grouped by the activity that generated the waste (e.g. fleet maintenance, or part degreasing). There are approximately 40 on-site facilities completing the annual report. This option was rejected because it would require reporting only for this very small subset of generators. It would be very difficult and potentially misleading to utilize this information to make inferences about overall generator behavior given the very small sample size.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC has made a determination that adoption of this regulation will 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 regulation will not impose such costs or savings on any state agency, the cost to any 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, or other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

DETERMINATION OF NO ADVERSE STATEWIDE ECONOMIC IMPACT

DTSC has made an initial determination through the economic analysis that the proposed regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states. The proposed regulation reduces the amount of paperwork for some businesses so the extent this proposal has an economic impact, that impact is a favorable one.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DTSC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF REGULATORY 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 will be created, expanded or eliminated in California as a result of the proposed regulation. The rulemaking also does not benefit worker safety. It will, however, benefit owners and/or operators of hazardous waste Treatment, Storage and Disposal Facilities (TSDF) from the costs of producing unnecessary paperwork and allows DTSC to reallocate employee resources to work on higher priority

projects. Further, as this rulemaking would reduce TSDf's reporting requirements from annual to biennial, it will not diminish DTSC's ability to protect public health and the environment from the harmful effects of hazardous waste.

EFFECT ON HOUSING COSTS

DTSC has made a determination that the proposed regulation will have no significant effect on housing costs.

EFFECT ON SMALL BUSINESSES (1 CCR 4)

DTSC has determined that the regulation will have a positive impact on small businesses that are owners and/or operators of hazardous waste TSDFs. The proposed regulations will allow small business TSDFs to avoid incurring the costs associated with preparing and submitting the Facilities Annual Report.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking to be exempt under the California Environmental Quality Act (Public Resources Code section 21000, et seq.). This rulemaking meets the statutory exemption available under subdivision (b)(8) of Public Resources Code section 21080. 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.

PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to *Mike Sorensen* of DTSC at (916) 323-3511 or, if unavailable, *Ed Nieto* of DTSC at (916) 255-3578. However, such oral inquiries are not part of the rulemaking record.

A public comment period for this proposed regulation has been established commencing on November 23, 2012, and closing on **January 7, 2013** for statements, arguments, or contentions regarding the rulemaking and/or supporting documents that must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts this regulation.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, 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 **Kryisia Von Burg** of DTSC's Regulations Section 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 updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from **Kryisia Von Burg** at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation.

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 applicable EList or e-mail: regs@dtsc.ca.gov.

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

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Ms. Von Burg's phone number is (916) 324-2810. If Ms. Von Burg is unavailable, please call Ms. Arnold at (916) 322-2004.