

**PERMIT MODIFICATION APPLICABILITY,
CLASSIFICATION AND APPEAL PROCEDURES,
AND APPEAL PROCEDURES FOR PERMITS
DEPARTMENT REFERENCE NUMBER: R-96-10**

FINAL STATEMENT OF REASONS

LOCAL MANDATE DETERMINATION

DTSC has determined the proposed regulations impose no mandates on local agencies or school districts.

ALTERNATIVES CONSIDERED

DTSC has determined that no 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, or would be as effective and less burdensome to affected private persons than the proposed action.

Detailed Statement of Reasons:

Section 66271.18. Appeal of Decisions to Grant, Issue, Modify or Deny Permits.

This is an existing section that details the procedures for an interested party to appeal a DTSC permit decision. The only changes proposed to this section are an addition of language to subsection (d). The appeals procedures for permits apply to both RCRA-regulated and non-RCRA-regulated activities.

Section 66271.18(d) This is an existing subsection that states that, when DTSC determines either to deny review of a permit decision, or to review the permit decision, based on the merits of the appeal, that the order issued constitutes DTSC's decision. No time frame for this decision to become effective is currently designated. The proposed change is to add the following phrase: "and shall be effective on the date of mailing of the order denying review or decision on the merits." Currently, any order issued would include an effective date; most orders are effective immediately. The proposed regulation simply formalizes current DTSC practices, so there is little or no actual impact on the appeals process.

**RESPONSE TO COMMENTS RECEIVED DURING
SECOND 45-DAY PUBLIC COMMENT PERIOD FOR THE
PERMIT MODIFICATION REGULATIONS, R-96-10**

One comment was received during the second 45-day public comment period, November 2, 2001 through December 18, 2001, on these regulations. The comment was received from Mr. Douglas Waltermire, Manager of Environmental Affairs for the IT Corporation. The comment is as follows:

IT Corporation owns and conducts post-closure maintenance and monitoring of two non-RCRA disposal sites located in Northern California. Post-closure permits for these two facilities were issued by the Department of Toxic Substances Control (DTSC) in late 1997 and early 1998. In addition to operating under these post-closure permits, IT also has Waste Discharge Requirements (WDR) from the Regional Water Quality Control Board (RWQCB). In fact, the RWQCB is recognized as the lead agency for both these sites pursuant to the requirements of Health and Safety Code section 25204.6.

We have reviewed the referenced proposed regulations and suggest a minor modification is appropriate to address potential situations wherein the lead agency (RWQCB) approves appropriate changes to site operations. While our post-closure permits provide the necessary clarification of how these changes are handled, it would be useful to also incorporate similar language into the regulations to provide better consistency between sites across the state. For your reference, the following language is currently afforded IT in its post-closure permit for the Benson Ridge Facility. The Montezuma Hills Facility permit has similar language.

“The RWQCB also regulates the Facility. Any Waste Discharge Requirements concerning the Facility issued by the RWQCB are incorporated as a condition of this Post-Closure Permit by reference, as required by Health and Safety Code Section 25204.5. Currently the Facility is governed by the Regional Water Quality Control Board Waste Discharge Requirements, Order No. 91-136, adopted June 28, 1991. Should any discrepancies arise between the existing/subsequent RWQCB WDRs and the Approved Plan, the WDRs shall prevail with the RWQCB acting as the primary governing agency.”

In the proposed regulations, section 66270.42.5, subdivisions (b)(16) and (b)(17) acknowledge that some activities may not be subject to DTSC's permitting authority, but still require notification. While these options might suffice for IT's sites,

some question could be raised based on the content of section 66270.42.5, subdivisions (c) and (d). In both these sections, certain changes to the facility that result in a reduction in operation and/or maintenance requirements, require formal permit modifications.

A good example of this potential inconsistency would be a reduction in groundwater monitoring requirements approved by the RWQCB for one of IT's two non-RCRA sites. Because these would be a part of a revision to the WDRs, they could be considered to be RWQCB "requirements" [66270.42.5(b)(16)], but would also be less stringent than previous program elements [66270.42.5(d)]. Furthermore, it is not clear whether these would be subject to the Department's permitting authority and therefore require notice pursuant to section 66270.42.5, subdivision (b)(17).

Because DTSC acknowledges that the RWQCB's requirements take precedence at these Facilities, we suggest an additional paragraph be added to section 66270.42.5, subdivision (b) to specifically address this situation. Potential language might read as follows:

(18) Changes to a permit approved by the Regional Water Quality Control Board as lead agency pursuant to its authority under Health and Safety Code 25204.6, are not subject to DTSC permit modification provisions as the RWQCB requirements would prevail should discrepancies exist. DTSC shall be copied on any RWQCB-approved modifications within 30 days of approval.

Hopefully, this suggested change would avoid any inconsistency issues in the future and further streamline the permitting for Facilities subject to multiple agency requirements.

RESPONSE: DTSC understands the commentor's point, that the RWQCB has specifically been designated as the primary regulatory agency for some hazardous waste management activities. Changing the exemption (from having to comply with the permit modification procedures) from agency-required changes to owner/operator-requested/agency approved changes significantly expands the scope of the exemption. DTSC believes that this broader scope of activities is more appropriate for the permit modification process. DTSC appreciates IT Corporation's interest in these regulations, but is not making the proposed change at this time.