

FINAL TEXT

Amend section 66270.42 of Title 22, California Code of Regulations, to read as follows:

§ 66270.42. Permit Modification at the Request of the Permittee

(a) *****

(1) *****

(A) *****

(B) The permittee shall send a notice of the modification to all persons on the facility mailing list, maintained by the Department in accordance with section 66271.9(c)(1)(D), and the appropriate units of State and local government, as specified in section 66271.9(c)(1)(E). The notification shall include the information specified in subsections 66271.9(d)(1)(A) through 66271.9(d)(1)(D). The information shall also include a description of the proposed changes at the facility, and the name and telephone number of a Department contact person. This notification shall be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior Department approval, the notification shall be made within 7 days after the permittee notifies the Department and shall also be published in a major local newspaper of general circulation.

(b) *****

(1) *****

(2) *****

(G) a description of the proposed changes at the facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25186 and 58012, Health and Safety Code; 40 CFR Section 270.42.

Add section 66270.42.5 to Title 22, California Code of Regulations, to read as follows:

§ 66270.42.5. Permit Modifications for Non-RCRA Activities.

(a) This section applies only to permit modifications involving activities that are not subject to permitting requirements under the federal act.

(b) The following types of changes to a facility's authorization are not subject to the permit modification approval or procedural requirements of sections 66270.41 or 66270.42. Except as otherwise specified below, the owner or operator of the facility shall notify the Department in writing of any change within ten (10) calendar days after the change is put into effect:

(1) changes in the expiration date of the permit to allow earlier permit termination, with prior written approval of the Department;

(2) changes to the closure plan to reflect a decrease in the estimated maximum extent of operations or maximum inventory of waste on site at any time during the active life of the facility, with prior written approval from the Department;

(3) correction of non-substantive typographical errors;

(4) a change in the legal name of the facility that does not include changes in ownership or operational control of the facility;

(5) informational changes that do not impact the operation of the facility;

(6) changes in frequency of or procedures for monitoring, reporting, sampling or maintenance activities that provide for more frequent monitoring, reporting, sampling or maintenance;

(7) equipment replacement or upgrading with functionally equivalent components (other than the structural unit itself), as long as the functional capacity of the unit is not increased or the unit is not being moved to another location, with a written notice to the Department at least 30 days prior to the intended change, or such shorter time frame as may be approved by the Department;

(8) changes to waste sampling or analysis methods to conform with the Department's guidance or regulations;

(9) changes to analytical quality assurance/control plan to conform to the Department's guidance or regulations;

(10) changes in procedures for maintaining the operating record;

(11) changes in frequency or content of inspection schedules that provide for more frequent or more thorough inspections;

(12) changes in the training plan that increase the amount or type of training given to employees;

(13) changes in emergency procedures that maintain or improve the effectiveness of the response;

(14) relocation of emergency equipment;

(15) changes to structures or equipment within the boundary of a permitted unit, but which the owner or operator certifies as not actively related to the storage, treatment, disposal or secondary containment of hazardous waste, with a written notice to the Department at least 30 days prior to the intended change, or such shorter time frame as may be approved by the Department;

(16) changes to a permit required by another regulatory agency, if the activities affected by the permit are not directly related to hazardous waste management, and do not have an impact on the permitted hazardous waste management activity, may be made without notifying the Department;

(17) For changes to a permit required by another regulatory agency, if the activities affected by the permit are related directly to hazardous waste management, but are not subject to the Department's permitting authority, they may be made with a written notice to DTSC at least 30 days prior to the intended change.

(c) The following changes to a facility's authorization require compliance with the Class 1* permit modification procedures (Class 1 modification procedures and prior written Departmental approval) specified in subsection (a) of section 66270.42:

(1) changes in ownership or operational control of a facility, provided the procedures of section 66270.40(b) are followed;

(2) changes to waste sampling or analysis methods that are other than those set forth in the Department's guidance or regulations;

(3) changes in interim compliance dates, with prior written approval of the Department;

(4) changes in procedures for decontamination of equipment or structures, with prior written approval of the Department;

(5) changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior written approval of the Department;

(6) changes to analytical quality assurance/control plan other than to conform to the Department's guidance or regulations;

(7) removal of equipment from the emergency equipment list;

(8) changes to the closure plan to reflect an increase in the estimated maximum extent of operations or maximum inventory of waste on site at any time during the active life of the facility;

(d) The following changes to a facility's authorization require compliance with the Class 2 permit modification procedures specified in subsection (b) of section 66270.42:

(1) physical and operational changes to a facility except as specified in subsections (b) or (c) of this section;

(2) changes in the approved closure plan resulting from unexpected events

occurring during closure, unless otherwise addressed in this section:

(3) changes in frequency of, or procedures for, monitoring, reporting, sampling or maintenance activities that provide for less frequent monitoring, reporting, sampling or maintenance:

(4) changes in frequency or content of inspection schedules that provide for less frequent or less thorough inspections:

(5) changes in the training plan that decrease the type or amount of training given to employees:

(6) changes in emergency procedures that reduce the effectiveness of the response:

(7) changes in the expiration date of the permit to allow later permit termination.

(8) permit modifications that are designated in section 66270.42(d)(2)(C) or Appendix I of this Article as Class 3 modifications, but are determined by the Department, on a case-by-case basis, to have no significant potential for environmental concerns or significant public interest. If the Department determines, based on the nature of the proposed modification, the level of public interest, or other factors, that the modification shall be subject to the Class 3 permit modification procedures specified in section 66270.42(c), the modification shall be subject to the Class 3 permit modification procedures specified in section 66270.42(c).

(e) Notwithstanding subsections (b), (c) and (d) of this section, if the Department determines, on a case-by-case basis, that a proposed modification meets the criteria specified in section 66270.42(b)(6)(A)3, the modification shall be subject to the Class 3 permit modification procedures specified in section 66270.42(c).

(f) For changes not specifically addressed in this section, a facility owner/operator may propose a classification for the desired modification(s). A written proposal shall be made to the Department, and shall include the rationale behind the proposed classification.

(g) The Department may grant a temporary authorization pursuant to the procedures set forth in section 66270.42(e) for a Class 2 or Class 3 modification that is proposed for the purpose of effecting environmentally-beneficial changes to a facility.

(h) Notwithstanding section 66270.72, the owner or operator of an interim status facility may, for activities that are not subject to permitting or interim status requirements under the federal act, notify or request any modification to the facility pursuant to this Article.

NOTE: Authority: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25150 and 25200.15.

Amend Section 66271.18, Title 22, California Code of Regulations, to read as follows:

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

(a) Within 30 days after a final permit decision [or a decision under section 66270.29 to deny a permit for the active life of a hazardous waste management facility or unit] has been issued under section 66271.14, any person who filed comments on that draft permit or participated in the public hearing may petition the Department to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. Any person may petition the Department to review any condition of a temporary authorization under section 66270.42(f). The 30-day period within which a person may request review under this section begins with the service of notice of the Department's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

(1) a finding of fact or conclusion of law which is clearly erroneous, or
(2) an exercise of discretion or an important policy consideration which the Department should, in its discretion, review.

(b) The Department may also decide on its initiative to review any condition of any permit issued under this chapter. The Department shall act under this subsection within 30 days of the service date of notice of the Department's action.

(c) Within a reasonable time following the filing of the petition for review, the Department shall issue an order either granting or denying the petition for review. Public notice of any grant of review by the Department under subsection (a) of this section shall be given as provided in section 66271.9. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file a written argument. Notice of denial of review shall be sent only to the person(s) requesting review.

(d) When a review has been initiated pursuant to subsection (a) or (b) of this section, the order denying review or the decision on the merits shall constitute the Department's final permit decision: and shall be effective on the date of mailing of the order denying review or decision on the merits.

(e) A final permit decision on a petition to the Department under subsection (a) of this section is a prerequisite to seeking judicial review of the Department's decision.

(f) If a permit decision is pending on the date this section is amended to eliminate a hearing under the Administrative Procedure Act, this section shall be applied as follows:

(1) If a Statement of Issues or Accusation was issued prior to the effective date of

the amendment, the proceeding shall continue under the regulation in effect when the Administrative Procedure Act proceeding was initiated.

(2) If a Statement of Issues or Accusation has not been issued prior to the effective date of the amendment, the proceeding shall be governed by the amended regulation.

NOTE: Authority: Sections 25150, 25159 and 58012, Health and Safety Code.

Reference: Sections 25159.5, 25186, 25186.1 and 25200, Health and Safety Code; 40 CFR Section 124.19.

Add section 66271.20 to Title 22, California Code of Regulations, to read as follows:

§ 66271.20. Appeal of Decision on Class of Modification.

(a) The Department's decision on whether a permit modification is Class 1, 2 or 3 pursuant to section 66270.42(d) or 66270.42.5 (e) or (f) shall be made in writing and may be appealed only by the person who requested the modification.

(b) Within fifteen (15) days after the date of receipt of the written decision on the classification of a permit modification, the person who requested the modification may petition the Department to review the decision, pursuant to section 66271.18. The petition shall be in writing and shall include a statement of the reasons supporting a different classification.

NOTE: Authority: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25159.5, and 25200.15.

Renumber existing section 66271.20 as 66271.21.

§ ~~66271.20~~. 66270.21. Computation of Time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon that party or person by mail, three days shall be added to the prescribed time.

NOTE: Authority: Sections 25150, 25159 and 58012, Health and Safety Code.

Reference: Sections 25159.5, 25186, 25186.1, 25186.2 and 25200, Health and Safety Code; 40 CFR Section 124.20.