

NOTICE OF EXEMPTION

To: Office of Planning and Research
State Clearinghouse
P.O. Box 3044, 1400 Tenth Street, Room 212
Sacramento, CA 95812-3044

From: Department of Toxic Substances Control
Site Mitigation and Brownfields Reuse Program
1001 "I" Street, 11th Floor
P.O. Box 806
Sacramento, California 95812-0806

Project Title: Amendment to Land Use Covenants

Project Location: Statewide

County: Statewide

Project Description: California Code of Regulations, title 22, division 4.5, chapter 39, section 67391.1 clarifies the Department of Toxic Substances Control's (DTSC's) authority to require land use restrictions in the form of covenants, and the exceptions for properties that have contamination left in place. Recorded land use covenants contain land use restrictions which can specify requirements or limit the use of real property and affect the title to property. The prior regulations required DTSC to set forth and define land use restrictions in the form of covenants in a remedy selection or response action decision document prior to approving or concurring with a facility closure, corrective action, Removal Action Workplan (RAW), Remedial Action Plan (RAP), or other similar document when contamination is left in place. The purpose of recorded land use covenants is to protect the public health and safety, and the environment from contaminated land when contamination will remain at the property at levels which are not suitable for unrestricted use of the land. The contamination could be hazardous materials, hazardous wastes, waste constituents, or hazardous substances that are left in place.

The amended regulations are necessary to: 1) clarify when it is appropriate for DTSC to require land use restrictions in the form of covenants, and to include a description of the implementation and enforcement provisions necessary to ensure the integrity and long-term protectiveness of the land use covenant; 2) ensure that the regulation applies to site cleanup activities being conducted under DTSC's new brownfields authority of chapter 6.82 of the Health and Safety Code (Assem. Bill No. 389 (2003-2004 Reg. Sess.) enacted by stats. 2004, ch.705); and 3) for federally-owned property, permit land use covenants to be executed by DTSC and the federal government, or successor-in-interest to the federal government, during the initial property transfer process, and to be properly recorded. This regulation will make it easier for DTSC to obtain recorded land use covenants when contamination is left in place at federally-owned properties.

Name of Public Agency Approving Project: Department of Toxic Substances Control

Name of Person or Agency Carrying Out Project: Department of Toxic Substances Control

Exemption Status: (check one)

- Ministerial [PRC, Sec. 21080(b)(1); CCR, Sec. 15268]
 Declared Emergency [PRC, Sec. 21080(b)(3); CCR, Sec.15269(a)]
 Emergency Project [PRC, Sec. 21080(b)(4); CCR, Sec.15269(b)(c)]
 Categorical Exemption: [State type and section number]
 Statutory Exemptions: [State code section number]
 X General Rule [CCR, Sec. 15061(b)(3)]

Exemption Title: With Certainty, No Possibility of a Significant Environmental Effect.

Reasons Why Project is Exempt: These regulations will not result in potential for significant environmental impacts because they only enunciate the process for restricting contaminated properties and do not set the criteria for site cleanups or determine the levels of contaminants left in place. Therefore, these regulations will not result directly or indirectly in possible adverse physical changes to the environment. The use of institutional controls, including land use covenants, as part of a site remediation or facility closure is a well established practice under State and federal law.

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Branch Chief Signature

Date

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TO BE COMPLETED BY OPR ONLY

Date Received For Filing and Posting at OPR: