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### 15-DAY PUBLIC NOTICE AND COMMENT PERIOD NOTICE OF PUBLIC AVAILABILITY OF POST-HEARING CHANGES

#### PERMIT BY RULE FOR TREATMENT OF AQUEOUS WASTES CONTAINING CYANIDES

Department of Toxic Substances Control Reference Number: R-96-48  
Office of Administrative Law Notice File Number: Z-07-0605-12

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Pursuant to Government Code section 11346.8, subdivision (c), notice is hereby given that the Department of Toxic Substances Control (DTSC) has revised the text of the proposed regulations, which would clarify some of the requirements, and add one eligible treatment and three eligible waste streams. Commenters during the 45-day public comment period requested most of the changes made to the text. A written comment period has been established commencing on February 1, 2008 and closing on February 19, 2008.

#### **Availability of Text of Regulations**

DTSC mailed the original text and made it available for public review and comment on June 15, 2007. A public hearing was held on July 31, 2007 during which written and oral testimony was accepted. In addition, written comments were accepted during the 45-day public comment period that ended July 31, 2007.

DTSC has now made post-hearing changes to the original text. A copy of which is attached. This notice and the accompanying text can also be found on DTSC's internet site at <http://www.dtsc.ca.gov>. The ~~bold strikeout~~ and the **bold double underline** text represent the most current revisions to the original text.

#### **Proposed Regulations**

Permit by Rule (Cal. Code Regs., tit. 22, div. 4.5, ch. 45) is being proposed for the authorization to treat cyanide-containing aqueous waste (or wastewaters). DTSC proposed this self-implementing authorization to closely match the environmental threat posed by specified treatment when the treatment occurs on the same site where the waste is generated. Permit by Rule requires a facility to notify the local Certified Unified Program Agency (CUPA) (or other agency designated by the Secretary for California Environmental Protection Agency,

where there is no CUPA) of the treatment activity. The business must also certify compliance with the numerous protective standards of a Permit by Rule. When the facility has notified, it receives authorization; compliance with the regulatory requirements is determined upon inspection.

A Permit by Rule can only be issued for a specific list of waste streams and associated treatment processes that DTSC has found to be both well characterized and capable of being operated safely. The combination of waste stream and its corresponding eligible treatment is referred to as a Permit by Rule activity in this notice.

This proposed amendment to the Permit by Rule regulations provides regulatory relief by allowing an option to the standardized hazardous waste facility permit currently required to authorize certain onsite treatment of cyanide-containing hazardous waste. This proposed regulation does not affect any existing recycling exemptions or hazardous waste exclusions.

### **Modifications to the Proposed Text to California Code of Regulations Section 67450.11 Subsection (d)**

The following paragraphs identify changes and provide the basis for changes made to the text of the June 15, 2007 proposed regulations. Any reference to original language means the text found in the June 15, 2007 proposed regulations.

DTSC has added a qualifier to paragraph (1)(C) that the applicability of this proposed regulation is not intended to preclude a waste stream that may qualify for any other Permit by Rule activity. The original language was meant to only limit the treatment processes to waste containing cyanides. The proposed text does not disallow a waste stream that may need additional treatment under Permit by Rule.

Commenters requested that DTSC allow the authorization of cyanide-containing wastes generated by reverse osmosis. DTSC has revised the original language in paragraph (2)(B) to include this aqueous waste. The use of reverse osmosis to recycle water is similar to the use of ion exchange. Both of these technologies are used to eliminate industrial wastewater discharges and conserve water, so their use should be encouraged by facilitating the treatment of the resulting aqueous waste.

Commenters recognized DTSC's desire to provide incentives towards zero discharge of wastewater but requested that facilities should be given some leeway even if they have not been able to achieve facility wide zero discharge. DTSC has modified the original text in paragraph (2)(B) to allow aqueous waste generated from either ion exchange or reverse osmosis as an eligible waste stream for Permit by Rule for facilities provided these facilities have achieved zero discharge on specific process lines derived from the treatment of cyanide-

containing aqueous waste. By modifying the requirement more facilities may be encouraged to invest in additional technology that will greatly reduce the use of water.

Commenters requested that DTSC modify the original text to exclude specific recycling (reuse is a form of recycling) activities which are currently eligible for permit exemptions and do not need any further authorization. When reviewing the specific scenarios given in the comments, DTSC determined that it would be duplicative to reiterate existing recycling (reuse) exclusions or exemptions. However, DTSC decided to add the aqueous waste (rinse waters) generated from these exempt recycling activities as eligible waste streams to encourage these activities. Paragraphs (2)(D)(1) and (2) were added to the original text to reflect this decision.

Commenter requested the proposed regulations allow the treatment of rinse water discharges from onsite laboratories. These onsite laboratories generate dilute aqueous waste with traces of cyanide and heavy metals which is similar to the other aqueous waste included in the proposed regulation but vary in volume and concentration. DTSC is modifying the original text with a new paragraph (2)(E) to allow the treatment of this aqueous waste to encourage the operation of these onsite laboratories.

Both reverse osmosis and ion exchange are used for recycling water. Both technologies are used in a similar manner and are both considered well established. DTSC added paragraph (3)(F) to allow reverse osmosis as a treatment option for aqueous waste containing cyanide to treat wastewaters prior to discharge.

Although the proposed regulations provide regulatory relief for the onsite treatment of cyanide-containing aqueous waste, DTSC made specific best management practices a requirement of this proposed authorization. After reviewing the comments received, DTSC has determined that it is appropriate to allow some leeway in the prescriptive requirement. Paragraph (4)(A) has been revised to allow the use of drain broods or holding racks instead of requiring both. Paragraph (4)(B) has also been revised to require countercurrent rinsing, but only when there are multiple rinse tanks being used. These two prescriptive requirements are considered simple techniques that greatly reduce the generation of hazardous waste.

A commenter asked for clarification as to who is responsible for identifying the employees requiring the pollution prevention training. To address this issue, DTSC has revised the text in paragraph (4)(D) to specify that any employee that handles process solutions, process rinse waters, or aqueous waste that contains cyanide is required to be trained on pollution prevention measures.

DTSC clarified that the cyanide concentration refer to total cyanide and not amenable cyanide by modifying the original text in paragraphs (7)(A) and (7)(C)(2). DTSC further modified paragraph (7)(C)(2) to require that the methodology be documented in the waste analysis plan for ensuring that the concentration of total cyanide not exceed 5000 milligrams per liter (mg/l or parts per million (ppm)). This will allow review by the regulatory agencies of all the procedures and methodologies used to ensure compliance with this requirement. A minor change was made in paragraphs (7)(A) and (7)(C)2 to reflect the correct unit of 5000 mg/l versus 5000 ppm.

DTSC has made editorial changes to the manner in which sections, subsections, and paragraphs are cited in the proposed text. These include changing section 67450.11(a) to section 67450.11 subsection (a) which may make references in subsection (d) inconsistent with those in subsection (a). Additional editorial changes were made to correct grammar or revise paragraph references. Health and Safety Code section 25200.17 was added as a reference.

Changes were made to the Unified Program Consolidated Forms in California Code of Regulations, title 27, division 3, subdivision 1 to conform to the modifications made to the proposed text.

### **Submitting Comments**

DTSC considers these new changes to the rulemaking to be sufficiently related changes to the original text, as defined by California Code of Regulations, title 1, section 42. This notice includes all revisions made to the text since those indicated during the original public comment period.

Notice is given that any interested persons may submit comments regarding these revisions and only these revisions of the text by e-mail to [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov) or by mail to:

Regulations Coordinator  
Department of Toxic Substances Control  
Office of Legislative and Regulatory Policy  
P.O. Box 806  
Sacramento, CA 95812-0806

Written comments submitted prior to 5:00 p.m. on February 19, 2008, will be considered.

The information upon which DTSC relied is available for public inspection between 8:00 a.m. and 5:00 p.m. at the Regulations Section, located on the 22<sup>nd</sup> Floor at 1001 I Street, Sacramento, California. Requests and inquiries concerning this matter may be directed to the Regulations Coordinator, at the address indicated above or by telephone at (916) 322-6409. If the Regulations

Coordinator is unavailable, telephone the Chief of the Regulations Section at (916) 327-4508.

Inquiries regarding technical aspects of the proposed alternative considered should be directed to Ms. Evelia Rodriguez at (916) 322-3810. Note that any oral inquiries are not part of the rulemaking record.