CHAPTER 10: HAZARDOUS WASTE MANAGEMENT SYSTEM, GENERAL

Chapter 10 is based on 40 CFR Part 260. Chapter 10 contains an overview of chapter 10, rules for availability and confidentiality of information, rules for grammatical construction used in this division, limitations on local authority over hazardous waste facilities, processing times for Departmental actions based on actual performance, definitions of terms used in this division, a list of references used in this division, and the authorities and procedures for variance from the requirements of the hazardous waste control law.

ARTICLE 1: GENERAL

ARTICLE OVERVIEW: Article 1 commences with section 66260.1, an overview of the regulations contained in this chapter. Next, section 66260.2 establishes the rules the Department will follow in making information submitted to the Department available under the Public Records Act and the rules the Department will follow in protecting the confidentiality of this information. Then, section 66260.3 establishes rules of grammatical construction for these regulations. Lastly, this article establishes limitations on local authority over hazardous waste facilities and a listing of processing times for specified Departmental actions based on actual performance.

Section 66260.1: This section is based on 40 CFR section 260.1. It describes the contents of Chapter 10. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this statement of reasons and as follows:

The phrase "the Department" is being added to section 66260.1 (b)(1) because section 66260.3 gives procedures and criteria for release of public information by the Department.

In subsection (b)(1), the phrase "EPA" is being deleted in two places because this section establishes rules that the Department will follow in releasing information under State law.

40 CFR sections 260.1(b)(4), (b)(5), and (b)(6) are being deleted. The 40 CFR sections described in the above subsections have no counterpart in the proposed regulations; thus, these subsections are unnecessary.

Subsection (3) is being added to describe Section 66260.4. Addition of this new subsection is necessary to preserve the format of 40 CFR section 260.1 wherein each section in Part 260 is described in a separate subsection.

Subsection (4) is being added to describe Section 66260.5. Addition of this new subsection is necessary to preserve the

format of 40 CFR section 260.1 wherein each section in Part 260 is described in a separate subsection.

Subsection (6) is being added to describe Section 66260.11. Addition of this new subsection is necessary to preserve the format of 40 CFR section 260.1 wherein each section in Part 260 is described in a separate subsection.

Subsection (7) is being added to describe Section 66260.12. Addition of this new subsection is necessary to preserve the format of 40 CFR section 260.1 wherein each section in Part 260 is described in a separate subsection.

Subsection (8) is being added to describe section 66260.21. Addition of this new subsection is necessary to preserve the format of 40 CFR section 260.1 wherein each section in Part 260 is described in a separate subsection.

Subsection (9) is being added to describe section 66260.200. Addition of this new subsection is necessary to preserve the format of 40 CFR section 260.1 wherein each section in Part 260 is described in a separate subsection.

Subsection (10 is being added to describe section 66260.210. Addition of this new subsection is necessary to preserve the format of 40 CFR section 260.1 wherein each section in Part 260 is described in a separate subsection.

Section 66260.2: This section is based on 40 CFR section 260.2. It establishes procedures for the Department to release information provided to the Department pursuant to the hazardous waste control regulations and establishes procedures for claims and protection of confidential information. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this statement of reasons and as follows:

In sections 66260.2 (a), (b), and (c), the phrase "EPA" is being deleted because these regulations govern release and protection of confidential information by the Department rather than the EPA.

In section 66260.2 (a), the reference to the federal Freedom of Information Act is being deleted and replaced by a reference to the equivalent State law, the California Public Records Act. The reference to regulations implementing the federal Freedom of Information Act is being replaced by reference to the 40 CFR, Part 2, regulations implementing that federal act; because these regulations do not conflict with the State Public Records Act, we a retaining this reference to the 40 CFR Part 2 regulations under the authority of Health and Safety Code section 25159.5.

In section 66260.2 (b), the phrase "in accordance with" is being replaced by the phrase "pursuant to" for consistency with the general vocabulary used in these proposed regulations. Also, the phrase "Title 40 CFR" is being added before the reference to 2.203(b) and the words "of this Chapter" are being deleted because section 2.203(b) is a section of federal regulation rather than part of "this Chapter" as it was in the document used as a basis for writing these regulations (40 CFR).

New section 66260.2(c) is being made from parts of section 260.2(b) in order to clarify a confusing part of the federal regulations. This subsection sets forth the limits of disclosure for information claimed confidential in section (b). 40 CFR section 260.2(b) describes the procedure for claiming business confidentiality and sets forth the standards for the EPA to release this information. Because the original 40 CFR subsection has these two different functions, it is being split into two subsections, one for each function of the 40 CFR subsection.

In section 66260.2 (c), the phrase "pursuant to 66262.53 (a)" is being added in order to refer to the proposed State regulation which requires notification before export of hazardous waste.

In section 66260.2 (c), the phrase "U.S." is being placed before the reference to the Department of State to conform to a uniform manner of referring to federal agencies.

Section 66260.3: This section is based on 40 CFR section 260.3. It establishes rules for use of singular and plural terms in the State hazardous waste regulations. This section conforms with the corresponding federal regulation except as follows:

The words "and gender" are being deleted from the 40 CFR title and 40 CFR section 260.3 (a) is being deleted because the California Code of Regulations is required to use gender neutral words. Therefore, the establishing of rules for use of gender is not needed in section 66260.3.

Subsections (b) and (c) are being renumbered because subsection (a) is being deleted.

Section 66260.4 This section has been incorporated from existing Title 22, CCR, Section 66315 verbatim.

Section 66260.5 This section has been added to these regulations to satisfy the mandate of Government Code Section 15376 that the Department list maximum, minimum, and median processing times for permit decisions based on actual performance. These times have

been added for the elapsed time for decisions regarding hazardous waste hauler registration, variances, and the waste classification/ special waste concurrence. The Department has determined that issuance of a hazardous waste facilities permit need not be included because that permit is subject to the Permit Streamlining Act and is exempted from the Permit Reform Act. The processing times included were determined by the Department by studying representative samples of applications for the above determinations. Copies of these studies are included in the rulemaking file labeled "Permit Reform Act Studies."

ARTICLE 2: DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

ARTICLE OVERVIEW: This article contains two sections; the first, section 66260.10, contains the definitions for words and terms used in the hazardous waste control regulations. The second, section 66260.11, contains information on documents referred to in the hazardous waste control regulations.

Section 66260.10: This section is based on 40 CFR section 260.10. It contains those definitions applicable to the general hazardous waste control law. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this statement of reasons and as follows:

- 40 CFR definitions are being modified for several reasons:

They are being modified to clarify unclear references to federal acts or to specific EPA personnel.

References to federal acts and agencies in 40 CFR definitions are being changed to refer to State acts and agencies where appropriate.

Provisions in State definitions which are demonstrably more stringent are being incorporated into 40 CFR definitions.

40 CFR definitions are being deleted when the State definition is equivalent to but demonstrably more stringent than the federal definition.

- Title 22, CCR, definitions are being transferred whenever no counterpart exists in federal law. Title 22, CCR, definitions are also being transferred where they are consistent with but demonstrably more stringent than the corresponding federal definition.

Title 22, CCR, definitions are being transferred and modified whenever the State definition is more stringent but requires modification to be federally equivalent.

Title 22, CCR, definitions are not being transferred whenever they are being replaced by an identical or a more stringent federal definition.

- In order to improve the clarity of the proposed regulations, definitions occurring in parts of State and federal regulations other than Title 22, CCR,, Article 1 and 40 CFR section 260.10 are being transferred into section 66260.10. Several parts of 40 CFR contain definitions in their introductory paragraphs which apply to all of the hazardous waste control law. In addition, State statute contains definitions of key terms used throughout the

hazardous waste regulations. By consolidating these definitions in one section of the proposed regulations, confusion is avoided for members of the regulated community who may not know that the "definitions" sections in current State and federal regulations are incomplete. The Department feels that repetition of statutory definitions in these regulations is justified by elimination of the confusion that arises in the regulated community because the definitions central to hazardous waste management are divided between statute and regulation.

- Several definitions are not being consolidated into 66260.10; these definitions are specific to a subset of statutes or regulations and are not applicable to the general regulations. These definitions are being left in the counterpart to the regulation section wherein they are currently found or are not repeated if they appear in State statute. For example, the definition of "treatment" found in 25179.2 HSC differs from the general definition of "treatment" and is applicable only to the land disposal restrictions and treatment standards in Chapter 18.

40 CFR section 260.10 was used as the basis for the definitional section: both the order and the format of this section have been adopted. Use of the 40 CFR format will make the proposed regulations more understandable for both the regulated community and for the EPA during their review of California's authorization application.

For the second comment period, all terms co-defined (terms with more than one proper form such as: "Facility" or "Hazardous waste facility" were given separate listings in alphabetical order referring the reader to the actual definition. Thus, the reader looking up the definition of "facility" is referred to the definition of "Hazardous waste facility". This change was made to help the reader find these co-defined terms and was necessary to improve the clarity of this section.

Specific changes to 40 CFR section 260.10 in this section are:

"Accidental occurrence" This definition currently appears in Title 22, CCR, and has no 40 CFR counterpart.

"Accumulated speculatively" This definition currently appears in the introductory section to 40 CFR Part 261 rather than in section 260.10 with the other definitions. The format of this definition is being changed to be consistent with the 260.10 definitions. The change does not alter the meaning of the definition. The definition is being moved into 66260.10 in order to consolidate the all definitions for clarity.

"Act" or "RCRA" This definition is being deleted because these regulations are being promulgated to implement the

State's hazardous waste control law rather than the federal law. A definition of "RCRA" appears in proposed section 66260.11 with the acronyms and abbreviations.

"Active life" The phrase "the Department." is being added in place of the Regional Administrator because the Department receives certification of final closure for both State and federal facilities and will receive certification instead of EPA when the State is authorized. In addition, the co-defined term "operating life" was added for consistency with portions of State statute for the second comment period.

"Active portion" This definition corresponds to the federal definition except for the following changes:

The word "transfer" is being added to the list of operations defined as active. This change is necessary because transfer is included in the list of activities for which the State requires a permit.

A date, "November 19, 1980," is being substituted for the phrase "the effective date of these regulations" because it is that date.

"Activity" This definition is being changed by:

The word "facility" and that part of this definition which defines facility is being deleted because the term "hazardous waste facility" or "facility" is being defined in this section separately.

The phrase "this division" is being substituted for the phrase "the RCRA" because this term is being defined for use in these Title 22, CCR, regulations, rather than in RCRA.

"Acute aquatic 96-hour LC/50" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Acute dermal LD/50" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Acute inhalation LC/LO" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Acute inhalation LC/50" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Acute LD/LO" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Acute oral LD/50" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Acute toxicity" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Acutely hazardous waste" This definition is being incorporated to direct the reader to the regulations classifying waste for definition of this category of hazardous waste.

"Affected medium" This definition is being newly created in order to define a term to describe what part of the environment has been affected by a release. This term could refer to air, water, soil, groundwater, or surface water. This definition does not create any new regulatory requirements. Any new regulatory requirements associated with this term are emplaced by adoption of those requirements rather than this definition and will be explained in the explanation for those requirements.

"Applicant" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Application" This definition is being modified by:

Adding a title "application", making the 40 CFR definition subsection (a), and adding subsection (b). Subsection (b) defines this term as also including the application for registration as a hazardous waste hauler. Federal hazardous waste regulations have no provisions for registration as a hazardous waste hauler and thus has no application.

In addition, the regulation was modified for the December 1990 to January 1991 comment period by deleting the narrative description of the application forms and including references to the specific forms to be used.

"Aquifer" This definition was modified before the second public notice period to apply the definition to any formation capable of yielding any amount of water. The definition was restored to its original form for the third comment period in response to comments #11A and #15A.

"Assets" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Background monitoring point" This definition is being added to establish conformity with 40 CFR Part 264 Subpart F and existing State law. This section uses the term "upgradient

wells" because RCRA only addresses ground water quality. Existing State regulations address air, surface waster, soil, unsaturated zone liquid, and soil-vapor quality in addition to ground waster quality. Background monitoring points are used to provide consolidated locations where monitoring must be conducted to gather data which represents the quality of air, surface waster, ground water, unsaturated zone liquid, and soil unaffected by discharges of waste at each regulated unit; this information is the background data. A reference to "background monitoring points for ground water" will be make to specify the locations for establishing background ground waste quality and similar references will be made to distinguish between the locations for establishing background quality for the various media. The use of this definition merely consolidates under one definition requirements which currently exist in regulation and introduces no new regulatory requirements.

"Bioaccumulative toxic substance" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Bodily injury" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. This definition is being modified as follows:

A title "Bodily injury" is being added and the current definition is being incorporated as subsection (a).

A second definition of "bodily injury" from form MCS-90 of the federal Department of Transportation has been added as subsection (b) of this definition. AB 2869, Chap. 771 of 1988, requires that all State agencies use this form and conform to the federal definitions as regards transportation.

"Border zone property" This definition has been incorporated from Health and Safety Code section 25117.4. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"By-product" This definition, added for the second comment period, appears in federal law in the introductory section to 40 CFR Part 261 rather than in section 260.10 with the other definitions. The format of this definition is being changed to be consistent with the 260.10 definitions. The change does not alter the meaning of the definition. The definition is

being moved into 66260.10 in order to consolidate all generally applicable definitions for clarity.

"Buffer zone" This definition has been incorporated from Health and Safety Code section 25110.3. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Business" This definition has been incorporated from Health and Safety Code section 25110.5. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Business concern" This definition has been incorporated from Health and Safety Code section 25110.8. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Cargo tank" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Chemical toilet" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Chemical toilet additive" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Chemical toilet waste" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Chronic toxicity" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Closed portion" A new phrase is being added to the end of this definition requiring the applicable financial assurance requirements for closure be complied with before a portion of a facility can become a closed portion. This is a requirement for closure under sections 66264.143 (i) and 66265.143 (i). In addition, the reference to 66264.143(i) was corrected to reference to section 66263.143(j) for the December 1990 to January 1991 comment period.

"Closure" This definition is being transferred from 40 CFR section 270.2. This definition is being moved into 66260.10 in order to consolidate all generally applicable definitions for clarity. This definition conforms with the federal definition except as follows:

The defined word is being placed in quotation marks to conform with the format of this section.

The word "securing" is being replaced by the word "closing". Securing is used in these regulations to refer to site security as provided by fences and guards and was thus used incorrectly in the 40 CFR definition.

"Closure plan" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Component" This definition is being clarified by the addition of specific examples of what is being defined as "ancillary equipment." This addition will clarify the meaning of this term and thus clarify the applicability of those requirements which are placed on "components."

"Concentration limit" This term was added to the regulations for the second comment period in order to describe a value for physical and chemical parameters to be determined for specific facilities and included in the permit. These values specify the concentration of constituents used in the ground water protection standard. Inclusion of the term creates no new regulatory requirements; application of the term is justified in discussion of the groundwater monitoring regulations, Article 6 to proposed chapters 14 and 15.

"Constituents of concern" This definition is being newly created in order to define a term to describe those chemicals for which the Department will require monitoring. This definition does not create any new regulatory requirements. Any new regulatory requirements associated with this term are emplaced by adoption of those requirements rather than this

definition and will be explained in the explanation for those requirements.

"Container" The 40 CFR definition is being deleted and replaced by the Title 22, CCR, definition because the Title 22, CCR, definition includes the 40 CFR definition but has an additional section that is applicable only to Title 22, CCR, Articles 5 and 6; thus this definition addresses a portion of the regulations that has no federal counterpart, the hazardous waste hauler registration program. This definition was further changed for the December 1990 to January 1991 comment period by correcting the reference to Title 13, CCR, Section 1160.5(j) to Title 13, CCR, Section 1160.3(j).

"Control chart" This definition is being newly created in order to define a term to describe a document used to follow the operating parameters of a regulated process. This definition does not create any new regulatory requirements. Any new regulatory requirements associated with this term are emplaced by adoption of those requirements rather than this definition and will be explained in the explanation for those requirements.

"Corrective action measures" This definition was newly created in order to define a term to describe those actions required of a person to mitigate a release from a regulated unit. It was then deleted from the proposed regulations for the second comment period.

"Corrosive" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Covered container" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. This definition is being changed by substituting the words "cover or other device" for the word "closure" because the word closure is defined as a specific activity related to ceasing activity at a hazardous waste facility. Use of this word to mean a cover is confusing and is being eliminated.

"Current assets" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Current closure cost estimate" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Current liabilities" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Current plugging and abandonment costs" This definition was incorporated for the second comment period. It is taken from 40 CFR Section 264.142 (f) and has been moved into this section to consolidate the definitions for clarity.

"Current post-closure cost estimate" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"CWA" This definition is being deleted from this section and being placed in the acronyms section.

"Day" This definition is being incorporated to clarify the process for calculating days for the purpose of regulatory time limits. The calendar day was chosen rather the working day to be consistent with common law and with Government Code section 6800. In addition, the counting of time on weekends and holidays was corrected for the December 1990 to January 1991 comment period.

"Decontaminate" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. "Department" This definition has been incorporated from Health and Safety Code section 25111. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Department" This definition is being newly created in order to define a term in the regulations to use in reference to the Department of Health Services and, in the case of those authorities which can be enforced by the Department or the USEPA or only by the USEPA, the USEPA. This definition does not create any new regulatory requirements. Any new regulatory requirements associated with this term are emplaced by adoption of those requirements rather than this definition and will be explained in the explanation for those requirements. This definition was modified for the second comment period, in response to comment, in order to clarify the relationship of the Department and the EPA after the State is authorized.

For the December 1990 to January 1991 comment period, the language setting forth the authority of the EPA to take certain actions after the State has been authorized has been deleted. This language was unclear in its reference to which actions the EPA could take and did not satisfy the necessity

standard because EPA's ability to take actions after authorization derives from federal law rather than these regulations.

"Designated facility" Several changes are being made to this definition:

The word "transfer" is being added to the list of activities which can be done by a designated facility because the Department requires a permit or other authorization for transfer of hazardous waste. Thus, waste going to a transfer facility must be manifested and the transfer facility is the designated facility.

An additional phrase is being added defining a facility authorized by the state as a "designated facility" because the State requires manifesting and hazardous waste facility permits that the federal government does not. If a waste is sent to one of these facilities, the facility must be authorized by the State and must be designated on the manifest.

"Director" This definition conforms to the corresponding federal definition except for generic changes and as follows:

This definition is being modified by addition of the phrase "Department of Health Services" to clarify the fact that the word "director" as used in this division refers to the Director of the State Department of Health Services.

For the December 1990 to January 1991 comment period, the language setting forth the authority of the EPA to take certain actions after the State has been authorized has been deleted. This language was unclear in its reference to which actions the EPA could take and did not satisfy the necessity standard because EPA's ability to take actions after authorization derives from federal law rather than these regulations.

"Discharge" This definition appears to be inconsistent with Health and Safety Code section 25209.1; however, the definition of "discharge in Health and Safety Code section 25209.1 is limited in its applicability to that article. The proposed definition in these regulations is applicable to the general hazardous waste control law.

"Disclosure statement" This definition has been incorporated from Health and Safety Code section 25112.5. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it

will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

This definition was further modified for the December 1990 to January 1991 comment period by conforming it to the changes made to the statutory definition by AB 1299, Statutes of 1989, Chapter 1257.

"Disposal" This definition was changed for the second comment period to conform to changes made to the definition of disposal in State statute (Health and Safety Code section 25113) by AB 1847 of 1989. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Disposal site" This definition has been incorporated from Health and Safety Code section 25114. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Draft permit" This definition is being changed by substituting the word "Department" for the word "Director" because the Department approves permits under authority delegated by the Director. This definition was further modified for the December 1990 to January 1991 comment period by correcting several internal references.

"End-user" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. This definition is being modified by:

Placing a title above the subsections of this definition to conform to the format of this section.

Deleting the phrase ending subsection (b)(1) which identifies a waste regulated by the EPA and replacing it with the term "RCRA hazardous waste".

This definition was further modified for the third comment period by addition of subsection (b)(3). This subsection clarifies in response to comment 5B and made consistent with statute.

"Environmental Protection Agency" This definition is being deleted because the term "USEPA" is used throughout these regulations and is being defined in the section defining acronyms.

"EPA identification number" This definition is being deleted and being replaced by a definition of "Identification number" because the State issues identification numbers both to persons required to obtain an identification number under federal law and to persons not regulated under federal law. The first category would be receiving an EPA Identification number but the second would be receiving a State identification number.

"EPA region" This definition is being deleted because the term is not used in these regulations.

"Equivalent method" This definition is being changed to define analytical methods allowed by the Department under our existing authority in section 66310 (e) thru end (proposed section 66260.21) as "equivalent methods." This definition will not conflict with federal law because proposed section 66260.21 is limited to analytical or testing methods for non-RCRA hazardous waste or for methods already approved by the USEPA Administrator.

"Existing hazardous waste facility" Two changes are being made to this definition:

The phrase "Existing hazardous waste management facility" is being added to be consistent with 40 CFR which makes the two terms synonymous pursuant to 40 CFR section 260.10.

The subsections are being renumbered to conform to the numbering system of the California Code of Regulations.

"Existing hazardous waste management facility" This definition is being modified by the addition of a co-defined term from existing State law, "existing hazardous waste facility", because both terms have the same meaning. In addition, a statement has been added that these facilities have submitted Part A permit applications to the Department or to the USEPA. This is a requirement for a hazardous waste facility to operate in both California and under federal law.

"Existing portion" The Title 22, CCR, definition includes the federal but has a section for facilities regulated only under State law and thus is being incorporated to preserve existing

stringency. The definition has been modified by replacing "the effective date of these regulations" with February 2, 1985, the date used by the EPA in their definition of existing. The federal definition of "Existing portion" has been deleted in favor of the more extensive State definition.

"Existing tank system" The subsections are being renumbered to conform to the numbering system of the California Code of Regulations. In addition, the word "transfer" is being added to the list of activities which take place at facilities regulated as hazardous waste facilities and, thus, subject to requirements for existing tank systems. Transfer is an activity requiring a hazardous waste facility permit or other authorization from the Department and thus must be addled to this list.

This definition was further modified for the December 1990 to January 1991 comment period to clarify the applicability of the dates in this definition to tanks containing various categories of hazardous waste.

"Extremely hazardous material" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Extremely hazardous waste" This definition has been incorporated from Health and Safety Code section 25115. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Facility" This definition is being deleted to avoid redundancy because the term "facility" is being co-defined in the definition of "Hazardous waste facility".

"Facility or activity" This definition was added for the second comment period to establish a category of persons subject to the permitting requirements. This definition was deleted for the third comment period in response to comment 11C.

"Facility mailing list" This definition is being modified by the generic changes explained in the introduction to this document.

"Fine powder" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Halogenated organic compounds" or "HOCs" This definition appears in 40 CFR section 268.2 rather than in section 260.10 with the other definitions. The format of this definition is being changed to be consistent with the 260.10 definitions. The change does not alter the meaning of the definition. The definition is being moved into 66260.10 in order to consolidate all generally applicable definitions for clarity.

This definition was further modified for the December 1990 to January 1991 comment period to conform the reference to Appendix VI to Chapter 18 to the change in designation of that appendix to Appendix III-A.

"Free liquids" This 40 CFR definition was modified for the second comment period by inclusion of the reference to the free liquids test found elsewhere in the regulations to clarify this definition.

"Handling" This definition has been incorporated from Health and Safety Code section 25116. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Hauler" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"HWM facility" This definition is being deleted because it is being co-defined with "Hazardous waste management facility", "hazardous waste facility", and "facility" in the proposed regulations.

"Hazardous constituent" This definition is being included to refer to the list of substances in Appendix VIII to Chapter 16 of these regulations. A second definition has been added as subsection (b). Previously, this was the definition for "hazardous waste constituent" in existing Title 22, CCR,. Changes in statute (Health and Safety Code section 25179.3(d) as amended by AB 4636 of 1988) have changed the way in which 0the Department uses the term "hazardous constituents". By defining this term in this manner and defining "hazardous waste constituent" consistent with 40 CFR, the definition will clarify which list of substances is referred to in other parts of these regulations.

In addition, the words "or leachate" were added for the second comment period to clarify that this term also applies to those

constituents which cause leachate to be identified as hazardous waste.

"Hazardous material" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. This definition is being modified by addition of a title, "Hazardous material", to conform to the format of this section. This definition was modified for the second comment period by addition of a phrase clarifying that serious illness qualifying a material as a hazardous material must be cause by that material.

"Hazardous waste" This definition has been incorporated to refer the reader to the regulatory process for determining if a waste is a hazardous waste. The regulatory definition is more specific than the statutory definition contained in Health and Safety Code section 25117 because it contains the scientific criteria and the testing protocols for determining if a waste is a hazardous waste. In addition, the term is being defined as including all the categories of hazardous waste in order to clarify the applicability of the requirements for hazardous waste to all the subclasses (categories) of hazardous waste.

"Hazardous waste constituent" This term is being defined in accordance with the 40 CFR section 260.10 definition. Currently, the State uses this term to in the same manner that 40 CFR uses the term "hazardous constituent", and vice-versa. In these proposed regulations, the phrase "hazardous constituent" is being defined as used in 40 CFR; the current Title 22, CCR, definition is also being added. Then, the phrase "hazardous waste constituent" is being redefined in conformance with the federal definition. These changes will clarify the meaning and the applicability of these two different terms and make them conform to the corresponding federal definitions.

"Hazardous waste facility" This definition has been incorporated from Health and Safety Code section 25117.1. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law. This definition is being changed by the addition of the co-defined term "Hazardous waste management facility". The later term is defined by 40 CFR section 270.2 identically to the State's statutory definition of "Hazardous waste facility".

"Hazardous waste facility permit" or "permit" This definition is being moved from 40 CFR section 270.2 in order to consolidate applicable definitions for clarity. This definition appears in section 270.2 as "Permit" and is being modified by:

The term "hazardous waste facility permit" is being defined along with the term "permit" because this term is used by the Department to fully describe the specific permit required for a hazardous waste facility.

The phrase "and the Department" is being added to the last line of this definition because both the EPA and the Department can act on permits.

"Hazardous waste management unit" The term "a waste transfer area" is being added to the list of hazardous waste management units because transferring hazardous waste is a form of hazardous waste management.

"Hazardous waste property" This definition has been incorporated from Health and Safety Code section 25117.3. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Highway" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Identification Number" This definition is being incorporated to identify the unique numbers used to identify generators and facilities managing hazardous waste. This definition describes the State identification number currently issued to persons managing non-RCRA hazardous waste and the EPA identification number issued to persons managing RCRA hazardous waste. A number of changes were made for the second comment period which clarify the relationship between the State ID numbers and the federal ID numbers and tell the reader how to recognize which number is State and which is federal.

"Ignitable" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Inactive portion" This definition is being modified by substituting a date, November 19, 1980, for the phrase "the effective date of these regulations". This date is the date

that the regulation emplacing this definition in 40 CFR became effective.

"Incompatible waste" This definition is being modified by renumbering to conform with the numbering system of the California Code of Regulations.

"Independent sample" This definition was greatly altered for the second comment period to allow general application to all regulations requiring an independent sample. The definition was originally specific to the groundwater protection standards of Chapters 14 and 15.

"Independently audited" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Indicator parameter" This definition was created to provide consistency with existing Article 10 of Subchapter 15. The proposed definition was deleted for the third comment period to conform to changes made to the groundwater protection regulations for the third comment period.

"Industrial furnace" This definition is being modified by renumbering to conform with the numbering system of the California Code of Regulations.

"Infectious waste" This definition has been incorporated from Health and Safety Code section 25117.5. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

This definition was, however, deleted from the regulations for the December 1990 to January 1991 comment period to conform the regulations to the changes to the Health and Safety Code contained in AB 1641 and SB 109, Ch 1614 and 1613, Stats of 1990. These new statutes defined "medical waste" and set up a management system, regulated by the Environmental Management Branch of DHS, which does not conform to the existing TSCP regulations.

"Inground tank" This 40 CFR definition was deleted for the third comment period. In California law, all tanks which are partially in the ground are regulated as underground tanks because it is impossible to visually inspect that portion of the tank which is below the surface of the ground.

"Inorganic solid debris" This definition was added to 40 CFR Section 268.2 by 55 FR 106, PP 22520-22720 and has been included here to consolidate all definitions applicable to the hazardous waste control law to improve the clarity of that law.

"Interim status" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Land disposal" This definition appears in 40 CFR section 268.2 rather than in section 260.10 with the other definitions. The format of this definition is being changed to be consistent with the 260.10 definitions. The change does not alter the meaning of the definition. The definition is being moved into 66260.10 in order to consolidate the all definitions for clarity.

"Land disposal method" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Land treatment facility" The 40 CFR definition is being deleted and the Title 22, CCR, definition incorporated because the Title 22, CCR, definition has an additional statement which requires that waste be incorporated into the soil for specified treatment purposes (degradation of hazardous constituents) rather than for unspecified reasons. This definition is more stringent because incorporation into the soil surface for any reason other than treatment would be regulated more stringently as land disposal vs. land treatment.

"Landfill" The old 40 CFR definition has been replaced with the new federal definition published in the Dec. 10, 1987 Federal Register.

"Land treatment facility" The Title 22, CCR, definition states that these facilities are incorporating hazardous waste into the soil surface for treatment; otherwise the definitions are identical. Because the additional language in the Title 22, CCR, definition makes this definition more stringent, it is being incorporated. The federal definition is not being incorporated.

"Legal Defense costs" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Liabilities" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"License" This definition has been incorporated from Health and Safety Code section 25117.10. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Load" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Major facility" This definition is being transferred from section 270.2 to consolidate the definitions applicable to the hazardous waste control law for clarity. This definition is being modified to conform to the format of this section.

"Management" This definition is being changed by the addition of two terms used in existing State law which are types of hazardous waste management. These terms are "handling" and "transfer", both of which are activities carried out with hazardous waste after its generation and thus are types of management. These types of management are not included in the federal definition of management because they are not used in the federal hazardous waste control law. The phrase "...the systematic control of..." has been deleted because persons are not always exerting systematic control when managing hazardous waste, but any of the activities listed in this definition constitute management even if they are not systematically carried out. In addition, the word "collection" is not being included because this can be a form of treatment which requires a permit as opposed to some forms of management which do not require a permit.

"Manifest" This definition is being changed by:

The EPA document number is being replaced by the equivalent State document number. Because the State is responsible for its manifest, the State number must be used.

A reference is being added also defining "manifest" as the document required by the destination state for a shipment of hazardous waste because any shipment of hazardous waste must be shipped using the manifest required by the destination state.

"Manifest document number" The federal definition being deleted because it is specific to describing the federal manifest. The State definition is equivalent to the federal

definition but describes the State manifest and thus is being incorporated.

"Maximum credible earthquake" This definition was added for the December 1990 to January 1991 comment period to address a concern raised by OAL about the lack of a definition for this term. The definition included here is taken from a California Division of Mines and Geology (CDMG) publication, CDMG Note 43, "Recommended Guidelines for Determining the Maximum Credible and the Maximum Probable Earthquakes". A copy of this note can be found in the volume entitled "R-89-017, Miscellaneous References, Exhibit R".

The CDMG definition has been modified by a clarification to the standard in subsection (f) of this definition. This clarification emphasizes that the "time factor" which "shall not be a factor" is the known or expected frequency of occurrence.

"Monitoring parameter" This definition is being created to provide a consolidated reference to the indicator parameters, waste constituents, hazardous constituents, and reaction products that the owner or operator will be responsible for. Subpart F of 40 CFR Part 264 addresses only hazardous constituents. Existing Subchapter 15 requires the owner or operator to monitor for and respond to statistically significant increases of parameters and constituents defined by the new term. This term merely provides a consolidated reference for currently regulated parameters and, therefore, creates no new regulatory requirements. This definition was modified for the third comment period by dropping the reference to indicator parameters and replacing it with a reference to physical parameters. This change was necessary to conform this definition with the deletion of the term indicator parameters.

"Monitoring point" This definition is being created to establish one term which provides a consolidated reference to locations where monitoring must be conducted. Subpart F of 40 CFR Part 264 uses the terms "monitoring wells" and "point of compliance"; these terms apply only to groundwater quality. Existing State regulations require the owner or operator to monitor for, and respond to, releases to air, surface water, soil, and the unsaturated zone in addition to groundwater. A reference to "monitoring points for groundwater" will be made to specify the groundwater monitoring locations and similar references will be made to distinguish between the monitoring locations for the other media. The use of this term and its definition do not create any new regulatory requirements.

"Natural resources" This definition has been incorporated from Health and Safety Code section 25117.8. This definition is being included in order to eliminate some of the regulated

community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Net working capital" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Net worth" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"New hazardous waste management facility" This definition is being modified by adding an additional co-defined term, "New hazardous waste facility", because this term is defined similarly to the federal term in existing Title 22, CCR, section 66134.8.

"New tank system" This definition conforms with the corresponding federal definition with the exception of the addition of a list of dates which tell persons when a tank handling different classes of hazardous waste became or did not become an existing tank. This list of dates is necessary because new requirements are being placed on non-RCRA tanks. These requirements cannot be placed on these tanks prior to the establishment of these regulations.

"Non-RCRA hazardous waste" This definition has been incorporated from Health and Safety Code section 25117.9. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

This definition was extensively modified for the second comment period to conform the definition to changes in the statutory definition enacted in AB 1847 of 1989. Further changes were made for the third comment period in response to comment M11.

"Non-sudden accidental occurrence" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Non-wastewaters" This definition was added to 40 CFR Section 268.2 by 55 FR 106, PP 22520-22720 and has been included here to consolidate all definitions applicable to the hazardous waste control law to improve the clarity of that law.

"Off-site" This definition is being transferred from section 270.2 to consolidate the definitions applicable to the hazardous waste control law for clarity. This definition is being modified to conform to the format of this section.

"Off-site facility" This definition has been incorporated from Health and Safety Code section 25117.11. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"On-site facility" This term and the term "On-site hazardous waste facility" are being co-defined. This definition has been assembled by combining the statutory definition as (a) and joining with the current Title 22, CCR, definition as subsection (b). Subsection (a) has been incorporated from Health and Safety Code section 25117.8. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law. Subsection (b) is the current Title 22, CCR, definition of "on-site facility" which combines the word "facility" with the current State and federal definitions of "on-site". The existing Title 22, CCR, definition makes the statutory definition more specific by including stated standards to determine if a facility can be considered to be "on-site". Thus, inclusion of the current regulatory definition is necessary to clarify the application of this definition. The phrase "on which the waste is produced,..." is being added to this subsection in order to clarify that the property in question is on-site with regards to generation. This is not a new requirement, it merely clarifies a potential ambiguity in the definition. The current regulatory definition defines "on-site hazardous waste facility"; thus, this term is being co-defined.

"Owner or operator" This definition is being transferred from section 270.2 to consolidate the definitions applicable to the hazardous waste control law for clarity. This definition is being modified to conform to the format of this section.

"P-value" This definition is being included to clarify the meaning of this term which is used in the statistical analysis for the groundwater protection regulations. This definition merely defines this term; it establishes no new regulatory requirements.

"Parent corporation" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Part A of permit application" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. The phrase "or the USEPA" is being added because many of the permit applications have been submitted to the USEPA under RCRA. These applications are currently processed by the Department under the USEPA grant and will be relegated to the Department when authorized.

"Part B of permit application" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Permit-by-rule" This definition is being transferred from section 270.2 to consolidate the definitions applicable to the hazardous waste control law for clarity. This definition is being modified to conform to the format of this section. In addition, the phrase "RCRA" is being deleted because permit-by-rule as a part of California law can refer to both RCRA and non-RCRA permits.

"Permitted facility" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. The phrases "or the USEPA" and "RCRA" are being added because some facilities, especially in other states, are permitted by the USEPA and not by the Department, but are still permitted facilities.

"Persistent toxic substance" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Person" The 40 CFR definition has been deleted and the statutory definition has been incorporated from Health and Safety Code section 25118. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by

consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law. The statutory definition being included here encompasses all the entities defined as persons by the federal definition and included the federal government and subdivisions thereof.

"Physical construction" This definition is being transferred from section 270.2 to consolidate the definitions applicable to the hazardous waste control law for clarity. This definition is being modified to conform to the format of this section.

"Physical parameter" This term was added for the second comment period. It merely defines a class of values which can be measured and describe the physical condition of a material (including groundwater). This definition merely clarifies the use of this term and does not create new regulatory requirements.

"Pile" This definition has been modified by addition of the term "waste pile" as a co-defined term. The term "waste pile" is currently defined in Title 22, CCR, identically to the definition of "pile" in 40 CFR. Because both terms appear in existing law and do not conflict, it is necessary to define both in these proposed regulations.

"Point of compliance" This definition is being newly created in order to define a term to describe a place in the environment where a facility must meet to groundwater monitoring and environmental monitoring requirements. This definition is necessary to differentiate which places are included in a unit and thus can have hazardous constituents present and which places are outside the unit and are thus must be kept free of hazardous constituents. This definition does not create any new regulatory requirements. Any new regulatory requirements associated with this term are emplaced by adoption of those requirements rather than this definition and will be explained in the explanation for those requirements.

"Point of exposure" This definition was created in order to define a term to provide a reference point for determining possible human exposure to hazardous constituents from regulated units so that risk assessments can be carried out. The definition was deleted for the second comment period to be consistent with changes in the permit regulations made in response to comment.

"Polychlorinated biphenyls" or "PCBs" This definition appears in 40 CFR section 268.2 rather than in section 260.10 with the

other definitions. The format of this definition is being changed to be consistent with the 260.10 definitions. The change does not alter the meaning of the definition. The definition is being moved into 66260.10 in order to consolidate the all definitions for clarity.

"Post closure plan" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Primary exporter" This definition is being modified by deleting the reference to "...equivalent state provision" because this definition is the equivalent State provision.

"Processing" The statutory definition has been incorporated from Health and Safety Code section 25119. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law. The reference to the statutory definition of treatment has been eliminated because "treatment" is being defined in this section.

"Producer" The statutory definition was incorporated from old Health and Safety Code section 25120. This definition was changed for the second comment period to be co-defined with the term "generator" which is used in the federal regulations to apply to the same persons.

"Property damage" This definition is being modified to conform to State law. This definition is being modified as follows:

A title "Property damage" is being added and the current definition is being incorporated as subsection (a).

A second definition of "Property damage" from form MCS-90 of the federal Department of Transportation has been added as subsection (b) of this definition. AB 2869, Chpt 771 of 1988, requires that all State agencies use this form and conform to the federal definitions as regards transportation.

"R chart" This definition is being newly created in order to define a term to describe a chart used to determine variability inside hazardous waste treatment processes and other processes in order to establish monitoring and operating requirements, applied action levels, and cleanup performance levels. This definition does not create any new regulatory

requirements. Any new regulatory requirements associated with this term are emplaced by adoption of those requirements rather than this definition and will be explained in the explanation for those requirements.

"RCRA" This definition is being deleted from this section. This term is being defined in section 66260.12 of these proposed regulations (acronyms and abbreviations).

"RCRA hazardous waste" A new definition was created to define that waste regulated by the EPA under RCRA. This definition was modified for the second comment period in order to conform with the statutory definition of RCRA hazardous waste enacted in AB 1847 of 1989, Health and Safety Code section 25120.2. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Reactive" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Reclaimed" Currently this definition appears in the introductory section to 40 CFR Part 261 rather than in section 260.10 with the other definitions. The format of this definition is being changed to be consistent with the 260.10 definitions. The change does not alter the meaning of the definition. The definition is being moved into 66260.10 in order to consolidate all definitions for clarity.

"Recyclable material" This definition is being incorporated from Health and Safety Code section 25120.5. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Recycled material" This definition has been incorporated from Health and Safety Code section 25120.5. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels

that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Regional Administrator" A co-defined term is being added to this definition: "USEPA Regional Administrator" to provide a term which more clearly identifies which agency this person is a regional administrator of.

"Registered hazardous waste transporter" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Regulated unit" This definition is based on the definition contained in 40 CFR section 264.90 (a)(2). The content of this definition follows that contained in the above 40 CFR section but has been put into a format that matches the other definitions in section 66260.10. The 40 CFR definition is incorporated into a regulatory requirement and so that it is not readily apparent that it is actually a definition. This new definition is a good example of the improved clarity of a consolidated definitional section. The definition was further changed for the third public notice period by correcting the cutoff dates for defining which units, both permitted (subsection (a)) and interim status (subsection (b)) are regulated units and subject to water quality monitoring. This change was made for conformity to federal law and was made in response to comment #19S. This change merely reflects current law and, thus, introduces no new regulatory requirements.

This definition was again modified for the December 1990 to January 1991 comment period in response to an OAL comment stating that the definition lacked clarity. The changes made at that time merely clarified the application of the applicability dates to various types of facility and did not change the effect of the regulation.

"Release" This definition was added for the second comment period. It was deleted for the third comment period for consistency with changes made to the groundwater protection regulations.

"Resource recovery facility" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Restricted hazardous waste" This definition was originally incorporated from Health and Safety Code section 25122.7. This definition was included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are

divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

This definition was modified drastically for the December 1990 to January 1991 comment period in order to conform this definition to the requirements of Health and Safety Code section 25179.6(a)(2). That statute restricts land disposal of all untreated hazardous waste, except newly listed hazardous wastes or hazardous wastes identified by application of new characteristics, after May 8, 1990. Because all untreated hazardous wastes are restricted either from land disposal or in the land disposal options allowed by a variance, exemption, or extension of an effective date, all hazardous wastes, with the exceptions given above, became "restricted hazardous wastes" on May 8, 1990. Note that the legislature is considering modification of this definition in a similar manner.

"Retrograde material" This definition has been incorporated from Health and Safety Code section 25121.5. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law. This definition is being modified to conform the internal numbering to the format of this section.

"Schedule of compliance" This definition appears in 40 CFR section 270.2 rather than in section 260.10 with the other definitions. The format of this definition is being changed to be consistent with the 260.10 definitions. The change does not alter the meaning of the definition. The definition is being moved into 66260.10 in order to consolidate the all definitions for clarity. This definition is being modified by including "or order" along with a permit in the list of documents in which the Department issues a schedule of compliance. The Department currently issues orders containing schedules of compliance; this definition does not create that authority, it merely clarifies this definition. The definition is also being modified by changing "statutes and regulations" to "applicable law". This change simplifies this definition; by being more economical with terms, the definition is clearer.

"Scrap metal" This Title 22, CCR, definition is being incorporated in place of the federal definition of "scrap metal" which appears in 40 CFR section 261.1. The Title 22, CCR, definition includes only scrap metal which neither poses a hazardous nor is mixed with sufficient hazardous waste to be hazardous. Because this definition is used in the regulations in such a way as to release the manager of scrap metal from some or all of the hazardous waste control regulations, limiting the definition is more stringent than adopting a broader definition. Thus, the existing Title 22, CCR, definition is being included because it leads to more stringent regulation of scrap metal.

"SDWA" This definition is.being deleted here and incorporated in the acronyms and abbreviations section of these regulations.

"Semitrailer" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Series A resource recovery permit" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Series B resource recovery permit" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Series C resource recovery permit" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Sharps" This definition was originally transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. The definition was, however, deleted for the December 1990 to January 1991 comment period because the responsibility for management of infectious waste has been transferred to the Environmental Management Branch of DHS. The statutes which effected this transfer of authority, AB 1641 and SB 109, Ch 1614 and 1613, Stats of 1990, defined a new term, "Biomedical waste" and established detailed standards for its management. These standards in statute are structured differently than current regulations for infectious waste; thus, the existing regulations (and definitions) addressing infectious waste are inconsistent with the new management scheme emplaced by the legislature and are being repealed.

"Site" This definition appears in 40 CFR section 270.2 rather than in section 260.10 with the other definitions. This definition is being moved into 66260.10 in order to consolidate the all definitions for clarity. The format of this definition is being changed to be consistent with the

260.10 definitions. This change does not alter the meaning of this definition.

"Small quantity producer" This definition was incorporated from Health and Safety Code section 25122.6. This definition was then deleted for the third comment period to conform with its repeal from statute in AB 1847 of 1989.

"Solid waste" The federal definition is being deleted because the State is defining and using the word "waste" to be equivalent to the federal term "solid waste." Under State statute, "solid waste" is defined as being exclusive of hazardous waste.

"Solid waste management unit" This definition is being created to clarify the applicability of existing corrective action requirements. 40 CFR regulations allow the EPA to require corrective action for releases at any waste management unit at a permitted facility. Because we have a term, hazardous waste management unit, which applies to the hazardous waste units, we need another to refer to those units handling other types of waste. This definition applies to all units managing waste. This definition creates no new regulatory requirements.

"Soluble threshold limit concentration" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Special waste" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Spent material" This definition is being moved from 40 CFR section 261.1 into the definitions section. The format is being changed in order to match the format of the other definitions in this section. The changes are only in format and do not change the meaning of the term.

"Spill" This definition was transferred from Title 22, CCR, because there was no equivalent definition in 40 CFR. The definition was deleted for the third comment period in response to comment 5C.

"State/EPA agreement" This definition is being transferred from 40 CFR section 270.2. This definition is being moved into 66260.10 in order to consolidate all generally applicable definitions for clarity.

"State" This definition is being deleted because only California's regulations can be promulgated by California; thus, the only State referred to herein is California. This definition is being replaced by a definition of "The State".

"Storage facility" This definition was added for the second comment period. It refers the reader to the definition of storage facility in State statute, Health and safety Code section 25123.3, rather than incorporating the full text of the definition because the Department is again sponsoring legislation which will change the definition of storage facility in the 1990 legislative session. This reference is necessary to inform the reader that the definition exists outside of the regulations and is important to understanding the applicability of provisions for storage facilities.

"Substantial business relationship" This definition was added to 40 CFR section 264.141 by the September 1, 1988 Federal Register (vol. 53, no. 170, page 33950). This definition is being moved into 66260.10 in order to consolidate all generally applicable definitions for clarity. This definition is being modified by substitution of the word "Department" for the phrase "applicable EPA Regional Administrator" because the Department determines what is a substantial business relationship for purposes of administering State law. In addition, the State will make that determination for the EPA when California becomes authorized.

"Sudden Accidental occurrence" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Surplus material" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Tangible net worth" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Tank system" The word transfer is being added to the list of activities which bring a tank into this definition because transfer is regulated in California in the same way as the other listed activities.

"The State" This definition is being moved from 40 CFR section 270.2 and modified by dropping reference to any state other than California because this is the only state for which California can promulgate regulations. The format of this definition is being modified to conform to the format of this section.

"Total threshold limit concentration" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Toxic waste" Under existing federal law, this definition is encompassed within the language of 40 CFR section 261.11.

Because 40 CFR 261.11 is not being adopted into the State regulations, this definition must be placed elsewhere. Therefore, it is being included with the other definitions. Further, because we are not adopting the criteria of section 261.11 for listing hazardous wastes but are merely including wastes listed by the USEPA Administrator, we are referring to 40 CFR section 261.11 rather than listing the criteria for identifying a "toxic waste".

"Trailer" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Transfer" This definition is being created to clarify the meaning of the word "transfer" which is used elsewhere in these regulations. There is no equivalent 40 CFR definition. This definition was further modified for the second comment period to clarify the applicability to generators in response to comment.

"Transfer facility" The term "transfer station", currently defined in Title 22, CCR,, is used to mean the same type of facility as a federally defined "transfer facility" and is thus being added to the defined term.

"Transportable treatment unit" This definition is being transferred from existing Title 22, CCR, because there is not equivalent federal definition.

"Treatment" The 40 CFR definition of "Treatment" is being replaced with the current statutory definition of "treatment". This definition has been incorporated from Health and Safety Code section 25123.5. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law. Because classifying an activity as treatment brings more stringent regulation into play (permits, etc.), the current State version of treatment being more inclusive triggers more stringent regulation of an activity and is therefore being incorporated. This definition was further modified for the second comment period by the addition of specific activities comprising treatment in response to comment A1.

"Treatment zone" This definition is being modified by inclusion of the more stringent provision of the current State definition of "treatment zone" in section 25209.1 (h) of the Health and Safety Code. The term "constituents of concern" is

being added to the things which are degraded in the treatment zone because we regulate not only hazardous constituents in land treatment units but also constituents of concern per the groundwater monitoring regulations.

"Truck" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"UIC" This definition is being deleted and placed into proposed section 66260.12, acronyms and abbreviations.

"Underground source of drinking water". This definition appears in 40 CFR section 270.2; it is being moved into this section in order to consolidate all the definitions central to the hazardous waste control law for clarity.

"Underground tank" This definition was modified for the third comment period. This modification removed the reference to a definition elsewhere in the regulations and replaced it with the text of the definition for clarity.

"Unfit-for use tank system" The word transfer is being added to the list of activities for which a tank is unfit for use because transfer is regulated in California in the same way as the other listed activities.

"Unsaturated zone" This definition was modified for the second comment period by adding the co-defined term vadose zone, used in existing State law. This term is synonymous with the term unsaturated zone; thus, its inclusion establishes no new regulatory requirements.

"Uppermost aquifer" This definition is being modified by deleting the provision that aquifers must be connected within the facility's boundary to be considered the same aquifer. Current State law does not require that the aquifers be interconnected with the boundaries of the facility to be considered the same aquifer. Thus, the current State definition is more stringent by identifying more aquifers as subject to regulation as the uppermost aquifer and this stringency is being preserved by this change.

"Used or reused" Currently, this definition appears in the introductory section to 40 CFR Part 261 rather than in section 260.10 with the other definitions. The format of this definition is being changed to be consistent with the 260.10 definitions. The change does not alter the meaning of the definition. The definition is being moved into 66260.10 in order to consolidate all definitions for clarity.

"USEPA Administrator" The definition of "Administrator" found in 40 CFR section 260.10 is being modified by the addition of

the phrase "USEPA" in order to clarify the fact that it is the administrator of that agency being referred to.

"Vacuum tank" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Variance" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"Vehicle" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR. The definition is being changed by adding a title to conform to the format of this section.

"Volatile organic compound" This definition has been incorporated from Health and Safety Code section 25123.6. This definition is being included in order to eliminate some of the regulated community's confusion which currently arises because the definitions central to the hazardous waste control law are divided between statute and regulation. The Department feels that, by consolidating the definitions in the regulations, it will eliminate some of the confusion expressed by members of the regulated community who are unaware of the existence of the statutory definitions and, thus, make it easier to comply with the hazardous waste control law.

"Waste" This definition is being included for completeness. Proposed section 66261.2 expands on the statutory definition of waste found in section 25124; rather than unnecessarily repeat this language here or deviate from the format of 40 CFR, a definition of "waste" is being included here which refers the reader to section 66261.2.

"Waste constituent" This definition is being created in order to have a term to define the applicability of the groundwater monitoring regulations of proposed Chapters 14 and 15. This term itself creates no regulatory requirements; it is used in regulations which actually establish the regulatory requirements.

"Wastewaters" This definition was added to 40 CFR Section 268.2 by 55 FR 106, PP 22520-22720 and has been included here to consolidate all definitions applicable to the hazardous waste control law to improve the clarity of that law.

"Water reactive" This definition is being transferred from Title 22, CCR, because there is no equivalent definition in 40 CFR.

"X bar chart" This definition is being newly created in order to define a term to describe this chart which is necessary for calculating statistical parameters necessary for setting of groundwater monitoring levels. This definition does not

create any new regulatory requirements. Any new regulatory requirements associated with this term are emplaced by adoption of those requirements rather than this definition and will be explained in the explanation for those requirements.

"Zone of engineering control" This definition is being modified by changing "owner/operator" to the defined term, "owner or operator".

Section 66260.11: This section contains title, publisher, and a source for documents referred to in the proposed regulations. This section is based on 40 CFR section 260.11 which is being modified as follows:

The third edition of SW-846 is being added to the list of references in section 66260.11 (a). This document contains all the current information in the second edition and has additional test methods.

The source for purchasing both editions of SW-846 is being changed in subsection (a) to reflect the new point of sale for these documents. The source listed in the July 7, 1988 no longer sells SW-846; phone calls by the Department established the new source as the correct source for these documents.

Title 40, Code of Federal Regulations is being added to the list of documents referred to in these regulations. The date chosen reflects the date that these regulations are published each year. A source for this document is also furnished. The date of the 40 CFR volume incorporated by reference was changed for the third comment period to the July 1, 1990 version to ensure that the most up to date version has been incorporated.

However, in response to concerns raised by the Office of Administrative law, for the December 1990 to January 1991 comment period, the version of 40 CFR referred to was changed to the one available (July 1, 1989) and additional references were included directing the public to those Federal Register notices, modifying the July 1, 1989 version of 40 CFR, which were incorporated into the body of the regulations.

Several other documents referred to in the proposed regulations have been added to the list of documents in 40 CFR Section 260.11 for the December 1990 to January 1991 comment period. These documents include ASTM methods and other analytical methods referred to in Chapter 11, and several Geotechnical manuals referred to in the groundwater monitoring regulations, Addition of these documents to this list is necessary to inform the regulated community where these documents can be obtained.

In subsection (b), the address of the Department's technical reference library is being substituted for the address of the Federal Register because these documents are available there for the use of California's regulated community.

In subsection (b), the last two sentences are being deleted. The sentence stating that the director of the Federal Register has approved the incorporations is incorrect because that person has no authority to approve California regulations. The last sentence setting the date of publication as the date of the publication is unnecessary because each publication referred to herein is dated.

The documents referred to in this section comprise thousands of pages of written material. SW-846 alone consists of three three inch binders. Because reprinting all the documents referred to herein would be unduly burdensome and expensive and otherwise completely impractical, the Department has decided to incorporate these documents by reference rather than reprint them in the text of the regulations.

Section 66260.12: This section is being created in order to consolidate all the acronyms and terms used in the proposed regulations. The Department feels that it is important to specify clearly what is meant by the acronyms and abbreviations which appear not only in our regulations, but also throughout the Department's correspondence and conversations. Including common terms in this section also allows them to be used elsewhere in the regulations in a short form so that the regulations are not "cluttered" with long citations for statutes that are commonly known. It is necessary, however, to clearly explain each of these terms to avoid confusion for the regulated community.

ARTICLE 3: VARIANCES

ARTICLE OVERVIEW: This article sets forth criteria and procedures for application and granting of petitions for alternative testing methods, waste classification concurrence, and variance from the standards of this division.

Section 66260.21: This section is based on Title 22, CCR, section 66310 (e) thru (f). It sets forth the procedure for a petitioner to petition the Department for variance to use an alternate analytical method for analysis of non-RCRA hazardous waste or to gain concurrence with a successful petition to the USEPA under 40 CFR section 260.21. This section conforms with the current state regulation except for the following:

Sections 66260.21 (a) thru (e) are being transferred from Title 22, CCR, section 66310. These provisions establish the Departments authority pursuant to Health and Safety Code section 25143 to grant a variance from the requirements of the hazardous waste control law for use of an alternate testing or analytical method. Existing Title 22, CCR, section 66310 establishes the Department's general variance authorities. Because the authority to use alternate methods is a separate portion of the general variance authority, it is being separated from the general variance authority found in existing Title 22, CCR, section 66310 (a) through (d) and substituted for the equivalent federal regulations used as a basis for these proposed regulations. This change conforms to the format of the federal regulations used as the base document for the proposed regulations.

In section 66260.21 (a), the following phrase is being added: "non-RCRA hazardous waste or a RCRA hazardous waste if the proposed testing or analytical method has been added to 40 CFR Parts 261, 264 or 265 per section 66260.21". This phrase is being added in order to limit the applicability of the State's variance authority to adding methods for testing or analyzing wastes not regulated by the EPA or to approving alternate test methods already approved by the USEPA for use with RCRA waste. This section must be limited by this phrase because the Department's procedure for allowing use of alternate analytical or testing methods could be judged less stringent than the equivalent federal procedures. The State's program cannot approve alternate testing or analytical methods without following the procedures set forth in 40 CFR section 261.20 for rulemaking petitions. Thus, this change ensures that this State regulation will be at least as stringent as the corresponding federal provisions.

The Department has allowed, in subsection (c), 60 days to notify the applicant that his application is complete or incomplete. Sixty days is needed for the Department staff to complete ongoing work in order to consider the application, to

review the material submitted, to research the issues which arise out of the variance application, to consult with other Department staff, and to draft, review, finalize, and mail the notification to the applicant.

The Department has allowed, in subsection (d), 180 days to notify an applicant that the variance is granted or denied. This time period is necessary to review the material submitted, to research the issues raised by the variance application, to consult with other Department staff, and, sometimes, to physically test the alternate method to determine if it can substitue for the specified analytical method. In addition to the scientific consideration of the application, Department staff must prepare a letter informing the applicant of the Department's decision. This letter must be reviewed by Department management, finalized, and mailed. All these activities take time both for actual consideration of the application and for meetings and consultations with other staff.

Sections 66260.21(e) through (i) are being renumbered because existing Title 22, CCR, section 66310 is being split into two parts. Existing subsections (e) thru (i) are becoming subsections (a) thru (e) respectively. This change is not substantive.

For the second comment period, the term "producer" was replaced throughout this section for consistency with the language of the federal regulations which use the term "generator".

For the December 1990 to January 1991 comment period, the word "may" in subsection (a) was changed to the word "shall" as discussed in the explanation of the necessity for the generic changes to the regulations found in the introduction to this document.

<u>Section 66260.200:</u> This section is based on current Title 22, CCR, section 66305. It establishes procedures and criteria for a generator to request Departmental concurrence with a nonhazardous determination made by that generator for his waste stream and it establishes procedures and criteria for a generator to request permission from the Department to manage a hazardous waste as nonhazardous. This section was modified extensively from the originally proposed regulation for both the second and third comment periods. Changes made include the following:

The term "producer" was replaced by the term "generator" throughout this section for consistency with the language of the federal regulations which use the term "generator".

Section 66260.200 (a)(2) and new subsection 66260.200 (b) are being created by splitting existing section 66305 (a)(2); the remaining subsections are being renumbered accordingly. Current subsection 66305(a)(2) contains two distinct regulatory requirements, one of which states that certain wastes must be classified as hazardous wastes, the other states that "..no person shall deviate from the requirements of this chapter in the management of a hazardous waste...". Because the second requirement applies not only to subsection 66305(a)(2) but also to subsection 66305(a)(1), it is being separated into a subsection parallel to subsection 66305(a) to emphasize that the requirement in the proposed subsection (b) applies to both subsections (a)(1) and (a)(2).

Section 66260.200(a) was modified for the second comment period by eliminating the reference to the "scope of Section 66261.2". If a material is a waste, it is already within that scope. In addition, the reader has been directed to Section 66261.3 to find the specific procedure for classifying a waste as hazardous rather being given general references to all of Chapter 11 and the statutory definition of a hazardous waste. This change was made to clarify the procedure used to classify a waste under the proposed regulations.

A note has been added to subsection (c) in the second comment period to clarify that a generator who incorrectly classifies his waste as nonhazardous is subject to the penalties of the hazardous waste control law for mismanaging a hazardous waste.

Section 66260.200 (d) is based on existing Title 22, CCR, section 66305 (c). This subsection was modified extensively for the second comment period to clarify the procedure and the time limitations on both the Department's action and the generator's submissions. It otherwise conforms to the existing Title 22, CCR, subsection except as follows:

Existing Title 22, CCR, section 66305 (c) requires that a request for Departmental concurrence with a generator's nonhazardous waste classification be on a form provided by the Department. The Department has not included a form in the existing regulations nor has it established an official numbered State form for this purpose. In order to insure collection of adequate information for classifying a waste, the Department examined two alternatives; one alternative was to create and incorporate an official form, the other was to merely list the required information. The Department has chosen to specify the information required rather than to incorporate a form because it feels that this approach is less burdensome to the regulated community. The information required in subsection (n) is generated by a regulated industry on a variety of documents including forms, resumes, and analytical reports. The Department has always required submission of this data in its original form; submission on a

form prescribed by the Department would require transcription of the information from the original documents and submission of these documents. Justification for each piece of information required is found in those portions of this Statement of Reasons which address subsection (n) and the list of required information which follows. In order to implement this alternative, a new subsection, subsection (n), is being added to section 66260.200 which summarizes the information required for the Department to classify a waste. Therefore section 66260.200 (d) states that the waste producer must submit the information required by subsection (n). In the proposed section 66260.200 (d), the word "a" and the words "shall be submitted" are being added , the words "which includes" are being added, and the reference to the information required by Article 11 is being changed to refer to the information required by section 66260.200 (n).

Section 66260.200(e), based on existing Title 22, CCR, section 66305(d), was extensively modified for the second comment period to conform the procedures and time limitations to the actual procedures and time limitations used by the Department. The new description of the procedure is clearer and internally consistent.

Section 66260.200 (f) is based on existing Title 22, CCR, section 66305(e). This section establishes procedures and criteria for managing a hazardous waste as nonhazardous. This subsection was extensively modified for the second comment period to conform the procedures and time limitations for applying for permission to manage a hazardous waste as a nonhazardous waste to the Department's actual procedures and timelines and to make the section internally consistent. This section has been changed from existing Title 22, CCR, Section 66305(e) as follows:

This subsection results from transfer of existing subsection 66310 (e) because of the renumbering of this section.

Because the Department cannot allow a federally regulated hazardous waste to be managed as nonhazardous, this section is being changed to limit this State variance authority to non-RCRA hazardous waste and wastes which have been excluded from regulation as hazardous wastes by the EPA. The words "non-RCRA hazardous waste" and the phrase "which has been excluded from these lists by the USEPA Administrator pursuant to section 66260.22 of this Article," are being added. Both of these changes recognize limitations on the Department's authority which currently exist in federal law. These limitations derive from the inequivalency of the Department's administrative variance authority to the EPA's rulemaking variances. Thus, the Department cannot issue variances to manage federally regulated waste as nonhazardous unless the waste has been given a variance (excluded from the lists of

hazardous wastes) by the EPA according to their rulemaking process.

The words "shall include the information required by section 66260.200 (n)" are being added to subsection (f) in two places to state that the waste producer must submit the information required by Subsection (n). Section 66260.200 (n) is being added to section 66260.200 to summarize the information required for the Department to classify a waste.

Originally proposed subsection (h) was deleted for the second comment period because its content was incorporated in subsection (f) as part of the clarification of the procedures and timelines used by the Department to approve this petition.

Section 66260.200(h), originally proposed as subsection (i) but renumbered for the second comment period, has been changed to apply to both types of petition found in this section in order to eliminate unnecessary text and to clarify that the Department will give reasons for disapproval of both petitions.

Section 66260.200(j) was extensively modified for the second comment period to conform the procedures and time limitations to the actual procedures and time limitations used by the Department. The new description of the procedure is clearer and internally consistent.

Section 66260.200(k) was extensively modified for the second comment period. Changes from the existing Title 22, CCR, subsection include:

The requirement for maintaining representative samples was clarified.

One further change was made to subsection (k) for the December 1990 to January 1991 comment period. The reference to SW-846 was clarified by specifying that the reference is to the third edition of SW-846.

The requirements for sample collection and management has been conformed to the testing and analysis manual incorporated by reference in Section 66260.11. This change was necessary to be consistent with the sampling and testing requirements of Chapter 11.

Section 66260.200(m) was modified for the second comment period by addition of the requirement that a waste be a non-RCRA hazardous waste before the Department can grant permission to manage it as nonhazardous. This change is necessary to remain consistent with federal law.

Section 66260.200 (m) is being added to this section. This subsection lists information which must be submitted to the Department for the Department to make the determinations in section 66260.200 (c) and (f). Existing subsection 66305 (e) requires that a request to manage a hazardous waste as nonhazardous be made on a form provided by the Department. The Department has not included a form in the existing regulations nor has it established an official numbered State form for this purpose. In order to insure collection of adequate information for granting this variance, a mechanism must be established for listing the information needed to make these determinations. Two alternatives were considered by the Department. The first alternative, creating an official form, was rejected because the generator collects his information on laboratory reports, sampling data sheets, and other documents with original signatures. By transferring the data to a single form, the generator must duplicate the effort of the original transcriber of the data. This transfer adds to the risk of error and it eliminates the original signatures and notes on the original documents. The Department has decided to adopt the second alternative. This alternative calls for the State to list, in regulation, the information required for the State to make the determinations necessary for approval or denial of the variance or the waste classification concurrence set forth in this section. The information required and the reasons why this information is necessary follows:

New subsection (m) states that a person applying to the Department for the determinations in subsections (c) and (f) must supply the information required by the rest of this subsection. In order for the Department to classify a waste as hazardous or nonhazardous, the Department needs information to establish that the waste is not hazardous pursuant to Chapter 11 or that the waste meets the requirements of section 25143 HSC for granting variance from the requirements of the hazardous waste control law.

New subsection (m)(1) requires information to identify the generating facility and give the Department an address and phone number for a facility contact. This information is required because the determination in subsection (c) or the variance in subsection (f) is specific to one generator's waste and the Department needs a contact person to send the results of the petition or to request additional information or clarification of previously submitted information.

New subsection (m)(2) requires information describing the hazardous waste. Information and justification for the request follows:

Physical description: The Department must know the physical state of a waste before classification or before granting a variance to manage the waste as nonhazardous. Waste

containing free liquids is subject to different requirements than wastes that don't; for example, wastes with free liquids are land disposal restricted in cases where wastes lacking free liquids would not be. In addition, the physical state of a waste is related to the hazard posed by that waste; for example, a waste hazardous by failing TTLC criteria poses an inhalation hazard if it is finely divided but may not pose an inhalation hazard if it is a monolithic chunk.

Quantities produced per unit time: The Department must know how much of a certain waste will be produced in order to determine whether the waste satisfies the statutory (Health and Safety Code section 25143) condition that the waste be insignificant as a hazard to human health and the environment due to its small quantity.

Detailed description of the generating process: Composition, physical state, and thus the hazard posed by a waste is often affected by the generating process as much as the input materials. The Department must know the generating process in order to see if additional hazardous components could be expected to be formed or added during the generating process or if the generating process would eliminate expected hazardous components.

Current waste disposal method: The Department can explore potential hazards based on the current disposal method. For instance, the tendency of a waste pile to form hazardous leachate could be determined from an analysis of runoff or leachate from the waste in its current disposal site.

New subsection (m)(2) requires sampling information needed to allow the Department to determine whether the information submitted is representative of the waste stream.

The identity of the samplers is required for the Department to contact the sampler for additional information on the sampling protocol and to ensure that there is some accountability for truthfulness in the sampling of the waste.

The date and location are required to properly identify the place of sampling, the location of the samples relative to the entire volume of waste, and the time of sampling relative to the date(s) of generation.

The Department must know the sampling methodology applied to the waste to determine whether the waste analysis is representative of the composition of the waste.

The sample handling and preservation techniques must be known to determine how or whether the sample composition has been altered by storage, packaging, or shipping conditions.

Subsection (m)(4) requires information regarding the testing laboratory(s) that contributed the analytical data to the petition.

The name and address of the laboratory are required identify the testing laboratory.

The laboratory certification number is required to satisfy the requirements of Health and Safety Code section 25198(a) that only analytical data from certified laboratories be used.

The test methods and references to locate those test methods in the literature are needed to judge the accuracy and precision of the data these methods generate and the appropriateness of the testing method for wastes of the type in question. Test methods must be sufficiently accurate and precise for wastes of the type in question; physical state, chemical interferences, and concentrations of hazardous constituents will affect the applicability of a particular analytical method to a particular waste. All this information is required for the Department to judge the adequacy of the analytical data submitted to support a petition.

The name and qualifications of the persons carrying out the waste analysis are required to ensure that the waste is tested in accordance with Health and Safety Code section 25198(b)(5).

The method of preparation of laboratory samples from field samples is required to determine if the preparation method alters the waste in such a way as to change the analytical results and to determine if the laboratory sample is representative of the field sample.

The information used to identify each sample is required to establish that the chain of custody for the samples has not been broken. Preservation of the chain of custody ensures that the analytical results are applicable to the samples taken from the waste.

Subsection (m)(5) requires that the petitioner submit all the data required by the regulation sections governing waste classification. This data is obviously needed to classify waste or to make a determination that a waste can be managed safely as nonhazardous. This subsection was modified for the second comment period by addition of additional sampling requirements. This change was necessary to ensure that the rules for samples collected in support of petitions under this section are consistent with the requirements of the waste classification rules of Chapter 11.

Subsection (m)(6) requires that the manager responsible for the generating facility certify that the information submitted is true. This certification helps to ensure that a waste

classification or variance from management as a hazardous waste will not be based on false information.

Section 66260.200(n) was added for the second comment period to make the requirements of this section consistent with the provisions of Health and Safety Code section 25205.8.

Section 66260.210: This section is based on Health and Safety Code section 25143 and Title 22, CCR, section 66310 (d) and (f). It establishes procedures and criteria for the Department to grant a waiver (variance) from any or all of the requirements of the hazardous waste control law. Health and Safety Code section 25143 has been modified extensively since current Title 22, CCR, section 66310 was promulgated. New Health and Safety Code section 25143 contains all the current requirements of existing Title 22, CCR, section 66310 except for the regulatory timelines established in Title 22, CCR,. Thus, for preservation of current stringency, current Title 22, CCR, sections 66310 (d) and (f) are being incorporated into these regulations.

Many changes were made to this section for the second comment period. These changes were necessary to conform this section to changes in the Department's variance authority (Health and Safety Code section 25143) made in Assembly Bill 1847 of 1989.

Extensive changes were again made to the text of this section for the December 1990 to January 1991 comment period. Most of the text which was duplicative of the statute was replaced by a reference to that statute, Health and Safety Code section 25143, designated subsection (a). The remainder of the text was designated as subsection (b) and modified to set forth the processing time information in the form required by the Permit Reform Act. Justification for those processing times follows:

The Department is allowing 60 days for notifying an applicant that the information submitted is complete, adequate for making a decision, and that the application is accepted for filing. The Department feels that 60 days is necessary for the Department to receive and direct the application, to allow the Department to address this application in the order received, to consider the technical information submitted and determine through literature searches etc what additional information is available on that specific waste or those specific waste constituents, to reach its decision of the completeness of the application, and to draft, review, finalize, and mail the notification letter to the applicant. The Department must complete a significant portion of its technical consideration of the application at this time to determine the extent of information needed for a decision and to determine the quality of the information submitted. This determination addresses sampling techniques, analytical methods used, documentation on generation and handling

methods, and quality control documentation on the entire sampling and testing procedure.

The Department is then allowing 60 days to decide to grant or deny the variance. This is the period when the Department must free someone to consider the application and must scrutinize the information submitted, collect further information from the scientific literature, and consult with staff toxicologists, geologists, or other specialized technical personnel to reach a decision on the variance application. Then, since variances are exceptions granted from the general requirements of the hazardous waste control law and certainly often set precedents, the decision and the draft decision letter must be reviewed by TSCP management, approved, finalized, and mailed. All these activities take considerable time, and the setting of a 60 day goal represents a short time period necessary to adequately consider and reply to the variance application.

40 CFR Sections not incorporated: Several 40 CFR sections are not being included in the proposed regulations. These sections address subjects addressed elsewhere in State law or create variances which are not allowed under State law. The specific sections are:

40 CFR section 260.20 is not being included. This section establishes general authority for the EPA to consider petitions from anyone to change any provision of 40 CFR. This section is not being adopted because provisions for adoption and modification of regulations are governed in the State by the Administrative Procedures Act. In addition, the State could only change provisions of State regulations and could not change provisions of 40 CFR and could not change federally equivalent State regulations without losing the equivalency of regulation necessary to obtain RCRA authorization.

40 CFR section 260.21 is not being included. This section establishes authority and procedures for petitioning the EPA Administrator to add an alternate testing or analytical method to 40 CFR Parts 261, 264, or 265. Because the Department can only change the California Code of Regulations and cannot change the federal regulations, this section is being replaced by the current State authority and procedures for approval of alternative testing or analytical methods.

40 CFR section 260.22 is not being included. This section establishes the authority and procedures for a waste generator to have a specific waste generated at a specific facility excluded from the lists of hazardous wastes in 40 CFR Part 261. Because the Department can change only the California Code of Regulations and cannot change the federal regulations, this section is not being included.

40 CFR section 260.30 is not being included. This section establishes additional variances from classification as "solid waste" for certain materials being recycled. This section is not needed because Health and Safety Code section 25143.2 contains California's exemptions from regulation for recycled hazardous wastes. In addition, these variances are still available under the State's general variance authority if this waste or activity meets the conditions for issuance of a variance contained in Health and Safety Code section 25143.

40 CFR section 260.31 is not being included. This section establishes standards and criteria for the variance set forth in 40 CFR section 260.30 which is not being adopted. Because the variance authority is not being adopted, the standards and criteria are superfluous and therefore will not be adopted.

40 CFR section 260.32 establishes the authority for a variance to classify a controlled combustion device not meeting the definition of a "boiler" as a "boiler". Because State law is more stringent and recognizes no difference between a boiler and an incinerator as does federal law, this variance has no utility in State law and is not being included.

40 CFR section 260.33 establishes procedures for the variances in sections 260.30 and 260.32. Because these sections are not being adopted, this sections is superfluous and is not being adopted. In this respect, State law will remain more stringent than federal law.

40 CFR sections 260.40 and 260.41 are not being included. These sections establish EPA's authority to add additional requirements to operations reclaiming hazardous wastes containing precious metals. Under federal law, persons reclaiming precious metals from hazardous wastes are not required to conform to the requirements of the manifest and permit system. These sections allow the EPA Regional Administrator to require that people reclaiming precious metals conform to the manifest and permit systems on a case-by-case basis. Because State law is more stringent and already requires that persons reclaiming precious metals conform to the manifest system and the more stringent California permit system, these 40 CFR sections are superfluous and are not being included in the proposed regulations.