

CHAPTER 15: INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TRANSFER, TREATMENT, STORAGE, OR DISPOSAL FACILITIES

This chapter is primarily based on 40 Code of Federal Regulations (CFR), Part 265. Some portions of Chapter 15 are based on existing Articles 17-32 in Chapter 30 of Division 4 of Title 22 of the California Code of Regulations (CCR), Chapter 6.5 of Division 20 of the Health and Safety Code (H&SC), or Subchapter 15 of Title 23 of the CCR. As discussed in the introduction to this Statement of Reasons (SOR), the proposed Chapter 15 regulations are based on one or more of these state laws wherever the state law is more stringent or broader in scope than the corresponding federal law. Chapter 15 sets forth minimum standards for the management of hazardous wastes in California. These standards apply to all owners and operators of hazardous waste management facilities that qualify for interim status, except as specifically provided otherwise in the chapter. Some articles in Chapter 15 establish standards that apply generally to all or most types of hazardous waste management facilities, other articles establish standards which are specific to a particular type of facility. The subjects covered by the general standards include: identification numbers, waste analysis, security, inspections, personnel training, requirements for ignitable/reactive/incompatible hazardous wastes, location and design standards, preparedness and prevention, contingency plan and emergency procedures, manifesting, reporting, recordkeeping, water quality and environmental monitoring, closure and post-closure, and financial responsibility. Chapter 15 establishes specific standards for interim status facilities operating or using the following types of hazardous waste management units: containers, tank systems, surface impoundments, waste piles, land treatment, landfills, incinerators, thermal treatment, or chemical, physical or biological treatment.

Subpart R of 40 CFR, Part 265 sets forth requirements for owners and operators of interim status underground injection wells. H&SC, Section 25159.15 prohibits the operation of a hazardous waste injection well in California without a hazardous waste facility permit. Thus, underground injection wells are not allowed to operate under interim status under California law. Therefore, the provisions of Subpart R are not applicable in California and are not being incorporated into Chapter 15 of the proposed state regulations.

ARTICLE 1: GENERAL

This article is based on Subpart A of 40 CFR, Part 265. It sets forth general information pertaining to standards for owners and operators of interim status hazardous waste management facilities including: the purpose, scope, and applicability of Chapter 15 and the relationship between the Chapter 15 standards and the Department's ability to take enforcement actions.

Section 66265.1: This section, which is based on 40 CFR, Section 265.1, specifies the purpose, scope, and applicability of the Chapter 15 regulations. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.1(a): The word "national" is being deleted because this language is not applicable in the context of state regulations.

Section 66265.1(b): This section conforms with 40 CFR, Section 66265.1(b) except for the following changes:

The phrase "after the effective date of these regulations" in the second sentence is being deleted in order to avoid confusion regarding the original effective date of these provisions, which is the date that the U.S. Environmental Protection Agency (EPA) regulations were originally promulgated, not the effective date of the state regulations.

Section 66265.1(c): This section, which is based on and is necessary to conform with H&SC, Section 25200.5, specifies that no facility can operate under interim status unless a Part A application has been submitted and that an interim status facility can only operate within the parameters set forth in their Part A application. These requirements are not included in the corresponding federal regulation.

40 CFR, Section 265.1(c)(4): This section of the corresponding federal regulation pertains to the applicability of certain federal regulations in states that have received federal authorization to conduct a Resource Conservation and Recovery Act (RCRA) hazardous waste program. It is not being included because this language is not applicable in the context of state regulations.

40 CFR, Section 265.1(c)(5), (6), (9), and (10): These sections of the federal regulation provide for exemptions from these requirements which are not allowed under existing, more stringent state regulations (Title 22, CCR, Section 66300) and are, therefore, not being included in the proposed state regulations. Specifically, certain municipal or industrial solid waste facilities which manage non-regulated hazardous waste, certain recyclers, totally enclosed treatment facilities, and elementary neutralization units and wastewater treatment units are exempt from regulation under 40 CFR, Section 265.1(c).

Section 66265.1(d)(12): This section conforms with 40 CFR, Section 265.1(c)(12) except for the following changes:

The phrase "or a transfer facility storing manifested shipments of hazardous waste in containers" is being added to

clarify that both the transporter and the transfer facility are exempt from the requirement to obtain a permit, if certain conditions are met. This regulation conforms with existing H&SC, Section 25123.3.

The maximum time allowed for storing manifested shipments of hazardous waste in containers at a transfer facility without a permit or interim status document (ISD) is being revised from "ten (10) days" to 144 hours". This change is necessary to comply with existing, more stringent state law (H&SC, Section 25123.3).

Compliance with proposed Title 22, CCR, Section 66263.18 is being added as a condition for this exemption from the permitting requirements. This addition is necessary to conform to existing Title 22, CCR, Section 66532, which is more stringent than the corresponding federal regulation. The sentence structure of this section is being modified to accommodate this and the other changes discussed above.

Section 66265.1(e): This section conforms with a comment immediately following 40 CFR, Section 265.1(c)(3) except for the following changes:

The words "by rule" following the word "permit" are being deleted. This change is necessary because the permits granted under the referenced sections are not permits-by-rule. This change is for clarification purposes only and in no way alters the meaning of the regulations.

The phrase "are required by 144.14 of this chapter" is being deleted and the phrase "under Subchapter H (Part 220) of Chapter I of Title 40 CFR" is being added. The reference to "144.14" is not necessary since it pertained to paragraph (2) of 40 CFR, Section 265.1(c) which was deleted in the December 1, 1987 Federal Register. The reference to "Subchapter H" is being added since this is the correct citation for permits issued to facilities addressed under paragraph (1) of Section 66265.1(d).

Section 66265.2: This is a new section. This section establishes that the changes to be made to the facility to comply with the provisions of this chapter shall be in accordance with a schedule of compliance established by the Department of Health Services (Department). This section is necessary to clarify to the interim status facilities that they have to comply with the provisions of this chapter within a certain period of time specified in the compliance schedule of the approved changes.

Section 66265.4: This section, which is based on 40 CFR, Section 265.4, clarifies the Department's ability to take enforcement

actions pursuant to the H&SC. This section conforms to the corresponding federal regulation except that the reference to RCRA, Section 7003 is being changed to the corresponding H&SC section, because the state does not have authority to take enforcement actions under RCRA, Section 7003. Additionally, this change clarifies that the Department may pursue enforcement actions using the full range of its state statutory authority. This change is being made for completeness and clarity and does not in any way alter the Department's enforcement authority. The section title has been modified to reflect this change.

ARTICLE 2: GENERAL FACILITY STANDARDS

This article is based on Subpart B of 40 CFR, Part 265. It sets forth general standards applicable to all interim status hazardous waste facilities including: identification numbers; required notices; general waste analysis; security; inspections; personnel training; requirements for ignitable, reactive or incompatible hazardous wastes; and location and design standards.

Section 66265.10: This section, which is based on 40 CFR, Section 265.10, specifies the applicability of this article. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.11: This section, which is based on 40 CFR, Section 265.11, specifies the requirement concerning identification numbers. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.12: This section, which is based on 40 CFR, Section 265.12 and Title 22, CCR, Section 67101(b), specifies facility notification requirements. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.12(b): This section is based on and is necessary to conform to existing Title 22, CCR, Section 67101(b). The corresponding federal regulation does not contain these notice and recordkeeping requirements, and is therefore less stringent than the state regulation. Additionally, the language of the existing Title 22 regulation is being modified in that the phrase "permits or" is being deleted because it is not applicable in the context of interim status regulations. Section 66265.12(c): This section has been re-numbered for clarity per Office of Administrative Law (OAL) comment.

Section 66265.13: This section, which is based on 40 CFR, Section 265.13, specifies requirements concerning general waste analysis. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.13(a)(2): The word "hazardous" is being added before the phrase "waste generated" for clarification and consistency with the corresponding regulation in Chapter 14 (Section 66264.13(a)(2)).

Section 66265.13(b)(3): This section, which pertains to the sampling portion of the facility waste analysis plan, is being modified to conform to existing Title 22, CCR, Section 67102(b)(3), which is broader in scope than the corresponding federal regulation.

Section 66265.13(b)(6): The reference "66265.200" is being added to the list of sections referenced for this section. The list includes all those sections found elsewhere in Chapter 15 that pertain to waste analysis except for Section 66265.200 which is concerned with waste analysis for tanks. Therefore, Section 66265.200 is being added to make the list complete. This change in no way alters the meaning of the regulation.

40 CFR, Section 265.13(b)(7): This subsection pertains to surface impoundments which are exempted under 40 CFR, Section 268.4 from the land disposal restrictions. This subsection is not being included in the proposed regulations because the state statute (H&SC, Section 25179.5, et. seq.) does not allow this exemption. (See the SOR for Chapter 18 for more information pertaining to this change.)

Section 66265.14: This section, which is based on 40 CFR, Section 265.14, specifies requirements concerning security. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.14(a): The phrase "the owner or operator can demonstrate to the Department that" is being added at the end of the sentence following the word "unless". This change is necessary to conform to existing, more stringent state regulations (Title 22, CCR, Section 67103(a)).

Sections 66265.14(b) and (c): The phrase "the owner or operator has made a successful demonstration" is being substituted for "exempt" following the word "unless" at the beginning of the first sentence in both sections. This change is necessary to conform to existing, more stringent state regulations (Title 22, CCR, Section 67103(b)).

Section 66265.14(c): This section conforms with 40 CFR, Section 265.14(c) except as stated above and the following changes:

The phrase "Hazardous Waste Area" is being added following the word "Danger", which appears twice in this subsection. The first change is necessary to conform to existing, more stringent state regulations (Title 22, CCR, Section 67103(c)). The second change is being made for consistency.

The word "Spanish" is being added following the word "English". This change is necessary to conform to existing, more stringent state regulations (Title 22, CCR, Section 67103(c)).

The parenthetical expression "e.g., facilities in counties bordering the Canadian province of Quebec must post signs in French, facilities in counties bordering Mexico must post signs in Spanish" is being deleted. The reference to the Quebec border is not applicable in California and, as previously stated, state regulations pertaining to Spanish-language signs are more stringent than the federal requirement.

Section 66265.15: This section, which is based on 40 CFR, Section 265.15, specifies general inspection requirements. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.16: This section, which is based on 40 CFR, Section 265.16, specifies the training requirements for facility personnel. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.16(b): The phrases "six (6) months after the effective date of these regulations or" and "whichever is later" are being deleted. This change is necessary to conform to existing, more stringent state regulation (Title 22, CCR, Section 67105(b)).

Section 66265.17: This section, which is based on 40 CFR, Section 265.17 and Title 22, CCR, Section 67106, specifies the general requirements for managing ignitable, reactive, or incompatible hazardous wastes. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.17(b)(2): The phrase "or the environment" is being added following the phrase "threaten human health". This change is necessary to conform to existing, more stringent state regulation (Title 22, CCR, Section 67106(b)(2)).

Section 66265.17(c): This section is based on and is necessary to conform to existing Title 22, CCR, Section 67106(c). The provisions of this section are not included in the corresponding federal regulation.

Section 66256.18: This section, which is based on 40 CFR, Section 265.18 and Title 22, CCR, Section 67120(b), sets forth interim status facility location standards relating to floodplains, salt formations, and underground mines and caves. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.18(a): The phrase "except for the Department of Energy Waste Isolation Pilot Project in New Mexico" is being deleted because this language is not applicable in California.

Section 66265.18(b): This section is based on and is necessary to conform to existing Title 22, CCR, Section 67120(b). The provisions of this section are not included in the corresponding federal regulation. The existing Title 22 regulation is being modified by adding the phrase "or maximum high tide" following "100 year flood", and by adding the words "or tide" after the word "flood". These changes are being made for clarification only and do not alter the meaning of the regulation.

Section 66265.25: This section, which is based on and is necessary to conform with Title 22, CCR, Section 67108, sets forth seismic and precipitation design standards.

Section 66265.25(a): The words "and all" are being inserted before the phrase "cover systems and drainage control systems" for clarification. The wording in the existing Title 22 regulation is awkward and confusing.

ARTICLE 3: PREPAREDNESS AND PREVENTION

This article is based on Subpart C of 40 CFR, Part 264. It sets forth the requirements for owners and operators of interim status facilities pertaining to procedures and equipment intended to prevent and prepare the facility for emergencies.

Section 66265.30: This section is based on 40 CFR, Section 265.30, which specifies the applicability of this article. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.31: This section, which is based on 40 CFR, Section 265.31, sets forth requirements for the facility maintenance and operation to minimize the possibility of the occurrence of an emergency situation. This section conforms to the corresponding federal regulation except for generic changes specified in the introduction to this SOR.

Section 66265.32: This section, which is based on 40 CFR, Section 265.32, sets forth the requirements for a facility to have specified equipment in order to be prepared for an emergency situation. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

The statement "it can be demonstrated to the Department that" is being added to conform with the standards set forth in existing Title 22, CCR, Section 67121.

Section 66265.33: This section, which is based on 40 CFR, Section 265.33, specifies the requirements for the testing and maintenance of emergency equipment to assure its proper operation in the time of emergency. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.34: This section, which is based on 40 CFR, Section 265.34, specifies requirements pertaining to communication and alarm system access by the facility personnel. This change conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

The statement "the Department has ruled that" is being added to both subsections (a) and (b) of this section to conform with the standards set forth in existing Title 22, CCR, Section 67123(a) and (b). These standards are more stringent

than the corresponding federal standards, which would allow the facility to make exception determinations, pursuant to this section, without obtaining the Department's approval.

Section 66265.35: This section, which is based on 40 CFR, Section 265.35, sets forth requirements for reserved aisle space for the unobstructed movement of personnel and equipment in the time of emergency. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

The statement "it can be demonstrated to the Department that" is being added to conform with the standards set forth in existing Title 22, CCR, Section 67124. These standards are more stringent than the corresponding federal standards, which would allow the facility to make the exception determination, pursuant to this section, without obtaining the Department's approval.

Section 66265.37: This section, which is based on 40 CFR, Section 265.37, sets forth requirements for facility personnel to make arrangements with local authorities for coordination in the event of an emergency. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.37(a)(1): Language is being added to this section to incorporate the Title 22, CCR, Section 67126(a)(1) requirement for familiarizing the local Office of Emergency Services (OES) with the layout of the facility. This more stringent requirement is not contained in the corresponding federal regulation.

ARTICLE 4: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

This article is based on Subpart D of 40 CFR, Part 265. It sets forth the requirements for owners and operators of interim status facilities to establish contingency plans and emergency procedures for the facility operation.

Section 66265.50: This section is based on 40 CFR, Section 265.50, which specifies the applicability of this article. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.51: This section, which is based on 40 CFR, Section 265.51, addresses the purpose and implementation of the contingency plan. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.52: This section, which is based on 40 CFR, Section 265.52, specifies the content of the contingency plan for the facility. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.52(g): This new subsection which states: "The plan shall include the current telephone number of the state OES." has been added to accommodate a concern expressed by EPA. Federal regulations have a specific telephone number for the National Response Center, while current state regulations simply require a call to the state OES. Requiring the facility contingency plan to contain the current telephone number for the state OES will address EPA's concern.

Section 66265.53: This section, which is based on 40 CFR, Section 265.53, sets forth requirements pertaining to the distribution of copies of the contingency plan. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.54: This section, which is based on 40 CFR, Section 265.54, sets forth conditions under which the contingency plan must be amended. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.55: This section, which is based on 40 CFR, Section 265.55, sets forth requirements for the facility to have an

emergency coordinator available at all times. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.56: This section, which is based on 40 CFR, Section 265.56, sets forth the procedures to be followed in the event of an emergency. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.56(d)(2): In this subsection the words "in every situation" are being incorporated to conform to the requirement of existing Title 22, CCR, Section 67145(d)(2), which is more specific and, therefore, more stringent than the corresponding federal regulation.

Section 66265.56(d)(2): Federal regulation requires that the on-scene coordinator for a geographic area, or the National Response Center, be notified in case of an emergency. State law is more specific, and requires that the state OES be notified in every situation. Therefore, this section of the proposed regulation is revised to reflect this specific state requirement which is set forth in existing Title 22, CCR, Section 67145(d)(2).

ARTICLE 5: MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

This article is based on 40 CFR, Part 265 Subpart E and Title 22, CCR, Sections 67160, 67161, 67162, 67163, 67164, 67165, 67166, and 67167. It sets forth general requirements and recordkeeping procedures for use of the manifest and additional reporting requirements.

Section 66265.70: This is based on 40 CFR, Section 265.70 which specifies the applicability of this article to owners and operators of both on-site and off-site facilities. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.71: This is based on 40 CFR, Section 265.71. It establishes the procedure for using the manifest. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Sections 66265.71(a)(2) and (b)(2) and (b)(4) and (c): The "Comments" are being deleted. They are explanatory in nature and do not satisfy the definition of regulations as provided in Government Code, Section 11342.

Sections 66265.71(a)(5) and (b)(5): These subsections are being added to the corresponding federal regulation. Section 67168(a) requires a facility receiving hazardous waste other than by pipeline to submit to the Department, within thirty (30) days of receipt of hazardous waste, a legible copy of the manifest used. This is more stringent than federal regulations.

Section 66265.72: This is based on 40 CFR, Section 265.72 which specifies the method for reporting manifest discrepancies. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.73: This is based on 40 CFR, Section 265.73 which specifies requirements and the process for keeping a written operating record at a facility. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.73(b)(2): The "Comment" is being deleted. This is explanatory in nature and does not satisfy the definition of regulations as provided in Government Code, Section 11342.

Section 66265.73(b)(3): Reference to 40 CFR, Section 268.4(a) which refers to regulations for treatment of restricted hazardous waste surface impoundments is being deleted. Existing State law, H&SC, Section 25208.4(c), prohibits discharge of restricted hazardous wastes into a surface impoundment; thus 40 CFR, Section 268.4(a) cannot be incorporated.

Section 66265.73(b)(7): This subsection is being added to the corresponding federal regulation. Section 67163(b)(7) requires off-site facilities to record and maintain all notices to generators. This is more stringent than federal regulation.

Section 66265.74: This is based on 40 CFR, Section 265.74 which establishes requirements and the process for availability, retention and disposition of records. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.74(a): This subsection specifies that all records will be furnished upon request for inspection to the Department. Section 67164 specifies that the SWRCB, and the appropriate Regional Water Quality Control Board may also request the records for inspection. This is more stringent than federal law and these agencies are being added to the subsection.

Section 66265.74(c): This subsection specifies a copy of records of waste disposal locations and quantities must be submitted to the Department and local land authority upon closure. Section 67164(c) requires that a copy also must be submitted to the appropriate Regional Water Quality Control Board. This is more stringent than federal law and this requirement is being added to the subsection.

Section 66265.75: This is based on 40 CFR, Section 265.75 which specifies the owner or operator of a hazardous waste facility must prepare and submit to the Department a Biennial report. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.75: The term "Biennial" is being deleted and replaced with "Annual." The phrase "even numbered" is also being deleted. Section 67165 requires that interim status facilities submit reports annually to the Department. This is more stringent than the federal requirement for a Biennial report.

Section 66265.75: This section requires an annual report be submitted to the Department. Section 67165 requires that a copy also be submitted to the appropriate Regional Water Quality Control Board. This is being added to the subsection.

Section 66265.75: The phrase "forms provided by the Department" is supplementing the EPA form reference because this form is obtained from the Department. In addition, the EPA form number and revision date have been added for the December 1990 to January 1991 comment period.

Section 66265.75(d): New language is being added that requires "EPA and California hazardous waste numbers, and U.S. DOT hazard class." This subsection specifies that a description and the quantity of hazardous waste be reported. These requirements currently exist in Section 66470(d). This is more stringent than federal regulations.

Section 66265.75(d): This subsection is being added to establish a process for the proper DOT hazard class description of non-RCRA hazardous wastes. All RCRA hazardous wastes have a proper description, but not all non-RCRA hazardous wastes do. This will provide a means of describing non-RCRA hazardous wastes when there is no corresponding DOT hazard class description available.

Section 66265.76: This is based on 40 CFR, Section 265.76 which specifies that if a facility accepts any hazardous waste from an off-site source without an accompanying manifest it is required to submit a report of this activity to the Department. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.76: The reference to EPA's form 8700-13B which is used by a facility when hazardous waste is received without a manifest is being deleted. Section 67166 specifies the format and information to be included when a facility submits an unmanifested waste report to the Department. This includes all requirements of the EPA form. Language is being added that clarifies this requirement. In addition, for the December 1990 to January 1991 comment period, the words "...on a form provided by..." were replaced with the words "...in the form of a letter to..." because it is important that unmanifested wastes be reported as soon as possible. It would often take additional time for a facility to procure forms before sending them to the Department. By sending the information in the form of a letter, the time spent before the Department is made aware of the manifesting violation is reduced.

Section 66265.76(g): The heading "Comment" and the federal correspondence is being deleted. The correspondence references the federal exemption for generators of hazardous waste producing less than 100 KG per a calendar month. Title 22 does not allow for this exemption. This change is consistent with the change proposed in Section 66262.20. In addition the "Comment" does not satisfy the definition of a regulation as provided in Government Code, section 11342.

Section 66265.77: This is based on 40 CFR, Section 265.77 which specifies additional reports which are required to be submitted. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.77: The term "Biennial" is being deleted and replaced with "Annual." Section 67165 requires that interim status facilities submit reports annually. This requirement is more stringent than federal regulations. This change is consistent with the change proposed in Section 66265.75.

Section 66265.77(d): This subsection is being added to the corresponding federal regulation. This requirement currently exists in section 67167(c) and is arguably more stringent than the corresponding federal regulations.

ARTICLE 6: WATER QUALITY MONITORING AND RESPONSE FOR INTERIM STATUS FACILITIES

This article is based on the proposed language for Chapter 14 Article 6 which is based on 40 CFR Part 264 Subpart F, Title 22 CCR Article 22, and Title 23 CCR Subchapter 15 Article 5. It sets forth the water quality monitoring and corrective action requirements for interim status facilities.

Subpart F of Part 265 of 40 CFR establishes the ground water monitoring and response programs required for hazardous waste facilities with interim status. In addition to those requirements, existing California regulations (in both Subchapter 15 and Title 22) require the owner or operator of a hazardous waste facility to monitor, and respond to releases to surface water, and liquid in the unsaturated zone. Further, under existing Subchapter 15, there is no distinction between regulated units at permitted facilities and those at facilities with interim status. In deciding how to address the monitoring and response requirements for interim status facilities, the following options were considered:

- 1) Use original 40 CFR Part 265 Subpart F as the base document and incorporate all of the more stringent requirements from existing Subchapter 15 and Title 22. This option was considered to be undesirable because of the vast structural differences in the three sets of regulations. Technical review staff from USEPA, Washington D.C., agreed with the members of the DHS workgroup that, if possible, we should apply the monitoring and response requirements for permitted facilities to interim status facilities;
- 2) Use original 40 CFR Part 264 Subpart F as the base document, repeat all of the modifications found in the proposed regulations for permitted facilities, and make additional changes as necessary to guarantee equivalency with federal regulations and to make the regulations self-implementing. This option was considered to be unnecessarily confusing; and
- 3) Use the proposed language for Chapter 14 Article 6 as the base document and make only those changes necessary to guarantee equivalency with federal regulations and to make the regulations self-implementing. This option was selected because its simplicity makes review of the resulting regulations less cumbersome. All changes made to Chapter 14, Article 6 as a result of public comment have also been made to this article without further explanation here.

In order to make these proposed regulations self-implementing most references to Departmental approval have been deleted. Language which directs the Department to consider particular performance criteria when granting Departmental approval has been modified so that the owner or operator is required to consider the same performance criteria when designing the monitoring program.

In cases where the owner or operator must choose between the use of alternate methods, language has been added to require that sufficient documentation be maintained in the facility operating record to support selection of the method.

Requirements from Part 265 Subpart F that do not appear in the requirements for permitted facilities have been added to these proposed regulations as necessary to make the proposed regulations equivalent to federal regulations. These requirements help to assure that facilities will meet certain minimum standards without Departmental oversight. In those cases where blanket requirements could be unnecessarily burdensome when universally applied to facilities without regard to site conditions, provisions have been made to allow the Department to approve the use of alternatives. For example, the specific list of monitoring parameters required under existing Part 265 Subpart F for a detection monitoring program may not provide useful information for some facilities. Proposed Section 66265.98(f) therefore allows the owner or operator to petition for Departmental approval of the use of alternate monitoring parameters if the substitute parameters are more likely to provide early detection of a release from the regulated unit.

Language has been added to maintain the RCRA requirement for a sampling and analysis plan, prepared by the owner or operator, and maintained at the facility. For the purpose of providing a detailed description of the water quality monitoring program for each regulated unit at the facility, this document, the water quality sampling and analysis plan, is to be used in place of the facility permit during interim status. References to the facility permit have been modified as appropriate throughout the proposed regulations to refer to the water quality sampling and analysis plan. This document must be prepared by the owner or operator and submitted to the Department for review. The Department may require the owner or operator to modify the plan as necessary to protect human health and the environment.

Requirements for monitoring during the post-closure maintenance period have been deleted because the regulated unit will be operating under Chapter 14 requirements, with a post-closure permit, during that time.

References to sections in Article 6 of Chapter 14 have been modified to refer to the corresponding section in Article 6 of Chapter 15. (For example : Section ~~66264.95~~ 66265.95)

Requirements for performing corrective action have been deleted. It is the intention of the Department to require Departmental approval, through the permit process, before a corrective action program is implemented. This approach is consistent with original 40 CFR requirements. The proposed regulations do require evaluation of any release from the regulated unit and the preparation of an engineering feasibility study for corrective action during interim status.

Section 66265.90 : This section is based on proposed section 66264.90. It establishes the applicability of the regulations contained in this article. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this Statement of Reasons and in the article overview and as follows :

Section 66264.90 : The phrase "facilities that treat store or dispose of hazardous waste" has been modified to read "facilities specified in Section 66256.1(b)". This change was necessary because the use of active verbs implied that the requirements would not apply to facilities that were not actively involved in the management of hazardous waste. Since these requirements continue to apply until the facility receives a facility permit, the language was modified as shown.

In response to a comment from EPA the definition of a regulated unit has been modified for interim status facilities to include all units that received hazardous waste since November 19, 1980. This was necessary to maintain the stringency of existing federal requirements.

Language has been added to allow the Department to require the owner or operator of a unit that stopped receiving hazardous waste by November 19, 1980 to comply with the requirements of Article 6 if the Department determines that waste or waste constituents may pose a threat to human health or the environment. This language is modeled after similar language in existing Title 23, Subchapter 15, is more stringent than the federal regulations, and has therefore been incorporated into these proposed regulations.

The requirement for "assurances of financial responsibility for corrective action" has been deleted because there was no comparable requirement in existing regulations for interim status facilities.

Section 66264.90(b) was not included because it would have unnecessarily duplicated the applicability language for Chapter 15.

Section 66264.90(c) has not been included because there is no comparable requirement in existing regulations for interim status facilities.

Section 66265.91 : This section is based on proposed section 66264.91. It establishes the conditions under which the detection and evaluation monitoring programs will be required for a regulated unit. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this Statement of Reasons and in the article overview and as follows :

Section 66265.91(b) : This section has been added to require the owner or operator to develop, submit and follow a water quality sampling and analysis plan within 180 days of the effective date of the proposed regulations. This document must be updated as necessary, and a current version must be maintained in the facility operating record. This section also specifies that the Department has the authority to require the owner or operator to modify the plan as necessary to protect human health and the environment. Until the modified program is in full operation, the facility must continue to monitor in accordance with existing federal requirements.

Section 66265.91(c) : This section is based on proposed section 66264.91(b). The last sentence of this subsection has been deleted because it refers specifically to the permitting process and there is no comparable process during interim status.

Section 66265.92 : This section is based on proposed section 66264.92. It specifies the elements of the water quality protection standard. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview.

Section 66265.93 : This section is based on proposed section 66264.93. It establishes the criteria for the selection of constituents of concern. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview.

Section 66265.94 : This section is based on proposed section 66264.94. It establishes the criteria for establishing concentration limits for constituents of concern. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

The provisions for establishing concentration limits which are greater than background have been deleted because they are only available for a corrective action program under 66264.100.

Section 66265.95 : This section is based on proposed section 66264.95. It establishes the criteria for establishing monitoring points for ground water, surface water and the unsaturated zone. This section conforms to the federal regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview.

Section 66265.96 : This section is based on proposed section 66264.96. It establishes the compliance period, which is the minimum period of time during which the owner or operator shall conduct a water quality monitoring program after a release from a regulated unit is detected. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview.

Section 66265.97 : This section is based on proposed section 66264.97. It establishes the general components of the water quality monitoring systems and which must be established, operated and maintained by the owner or operator. It also contains general requirements which apply to all of the monitoring programs. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

Section 66265.97(b)(1) : Language has been added to emphasize the requirement that the design of the ground water monitoring systems must be based upon information obtained from the hydrogeologic investigation of the facility area. This investigation is required under section 66270.14 as part of the Part B requirements. The Department is concerned that, without this additional guidance, an owner or operator will design and establish monitoring systems which are inappropriate for conditions at the facility. In response to a comment from EPA, a requirement has been added to this section that requires the ground water monitoring system to be operational within 180 days of the effective date of these regulations. Until the system is fully operation, the facility must continue to comply with 40 CFR Part 265, Subpart F.

Language has also been added to incorporate the existing federal requirement that the ground water monitoring system must include, at a minimum, one upgradient and three down gradient monitoring points.

Section 66265.97(e)(15) : This section is based on proposed section 66264.97(e)(15). Language has been added to incorporate an existing federal requirement that the owner or operator determine at least annually whether or not the requirements for locating ground water monitoring points are satisfied. If the ground water monitoring system is found to be inadequate, the owner or operator must make appropriate changes to the system as soon as technically feasible.

Section 66265.97(e)(16) : This section has been added to incorporate an existing federal requirement to establish background values for a specific set of parameters by quarterly sampling for at least one year. It is expected that most facilities will have already satisfied this requirement

pursuant to other state and federal regulations. Such facilities will not be allowed to repeat the determination.

Section 66265.97(e)(17) : Based on proposed section 66264.97(e)(16) this section has been modified to incorporate several specific reporting requirements for interim status facilities from existing federal requirements.

Section 66265.98 : This section is based on proposed section 66264.98. It contains the detailed requirements for an owner or operator who is required to implement a detection monitoring program. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

Section 66265.98(e)(6) : This section has been added to require that the owner or operator consider the list of leak detection analytes presented in Appendix VI to Chapter 15 when specifying monitoring parameters for a detection monitoring program. Selection of a suitable list of monitoring parameters is a critically important step in the design of an effective water quality monitoring program. In order to provide the owner or operator with guidance in making the selection, Appendix VI has been added to this chapter with a list of suggested leak detection analytes. This list has been compiled by USEPA based on investigations by USEPA's Environmental Monitoring Systems Laboratory in Las Vegas, Nevada.

Section 66265.98(f) : This section has been added in order to incorporate existing federal requirements for the use of specific monitoring parameters during a detection monitoring program. Provisions have been added to allow the Department to approve the use of substitute parameters if the substitutes are more likely to provide early detection of a release from the regulated unit. (Note: due to the addition of this subsection, references to the following subsections of to this section have been incremented. For example, proposed section 66265.98(g) is based on proposed section 66264.98(f).)

Section 66265.98(g) : This section is based on proposed section 66264.98(g). It has been modified to include the more stringent federal requirement that samples be collected at least quarterly (rather than at least semi-annually).

Section 66265.98(n)(5)(E) : This subsection has been added to incorporate an equivalent provision from federal regulations that the amended plan include a schedule of implementation.

Section 66265.99 : This section is based on proposed section 66264.99. It contains the detailed requirements for an owner or

operator who is required to implement an evaluation monitoring program. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

Section 66265.99(b) : The requirements from existing Title 22 section 67194(d)(5) that the owner or operator must complete the environmental "assessment as soon as possible and, within 15 days of completion, shall submit to the Department a written report containing an assessment of the environmental quality" has been added to this section in order to maintain the existing stringency of Title 22. Language has also been added to incorporate an equivalent provision from existing federal regulations that the assessment include a determination of the rate of migration of hazardous constituents.

Section 66265.99(d) : This section is based on proposed Section 66264.99(d). The requirement to submit an application for a permit modification has been changed to reflect the condition of interim status. The owner or operator is required to use the information obtained during the evaluation monitoring program to prepare for a corrective action program under section 66264.100 of Article 6 to Chapter 14.

Section 66265.99(e) : This section is based on proposed Section 66264.99(e). Routine monitoring, required by this section, shall continue as long as the facility remains in interim status.

Section 66264.99(e)(3) : This section is based on proposed section 66264.99(e)(3). This section has been modified to incorporate an existing federal requirement that groundwater sampling be conducted at least quarterly.

Section 66265.99(e)(4) : This section is based on proposed section 66264.99(e)(4). The requirement to monitor for constituents of concern at least every five years has been added to this section because it is possible that a regulated unit which is waiting to be permitted could remain in an evaluation monitoring program under this chapter for longer than five years. This is a requirement for permitted facilities for both detection monitoring and for corrective action. It was not included for evaluation monitoring for permitted facilities because it is the intention of the Department that the evaluation monitoring program have a relatively short lifetime.

Section 66265.99(e)(7) : This section is based on proposed section 66264.99(e)(7). It has been modified to incorporate an existing federal requirement that an interim status facility must make quarterly determinations of the rate and extent of migration of hazardous constituents.

Section 66265.99(e)(8) : This section has been added to incorporate an equivalent provision from federal regulations that the owner or operator report to the Department by March 1 of each year on the results of the evaluation monitoring program. This report must include an annual determination of the rate of migration of hazardous constituents in ground water.

ARTICLE 7: CLOSURE AND POST-CLOSURE

This article is based on Subpart G of 40 Code of Federal Regulations (CFR), Part 265. It sets forth the general closure requirements applicable to all interim status hazardous waste facilities, and the general post-closure care requirements applicable to all interim status disposal facilities and to certain interim status waste pile, surface impoundment, and tank system facilities. Closure and post-closure care requirements unique to each facility type are set forth in the facility-specific articles of Chapter 15.

Section 66265.110: This section, which is based on 40 CFR, Section 265.110, specifies the facility universe to which the requirements of this article are applicable. This section conforms to the corresponding federal regulation (including those regulations which appeared in Federal Register of September 2, 1988, as Subsection (b)(2) of this section) except for the generic changes specified in the introduction to this Statement of Reasons (SOR).

Section 66265.111: This section, which is based of 40 CFR, Section 265.111, sets forth the closure performance standard applicable to all interim status hazardous waste management facilities. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66264.111(b): The phrase "contaminated run-off" is being changed to "contaminated rainfall or run-off", and the word "hazardous" is being deleted from the phrase "hazardous waste decomposition products". These changes are necessary to conform with existing, more stringent Health and Safety Code (H&SC), Section 25245(a)(2).

Section 66265.112: This section, which is based on 40 CFR, Section 265.112, sets forth various requirements pertaining to the closure plan which must be submitted by all interim status facilities, including: submission procedures, plan contents, amendment requirements and procedures, and closure notification requirements and procedures. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.112(a): The phrase "By May 19, 1981" is being deleted since it is no longer time-relevant. This change does not alter the meaning of the regulation.

Section 66265.112(a): Language is being added to this section to require that a copy of the most current closure plan be "kept at the facility". This change is required to conform to

existing Title 22, CCR, Section 67212. The corresponding federal regulation does not include this requirement and, therefore, is less stringent.

Section 66265.112(b): The words "and/or" are being changed to "or", and the phrase "and to perform final closure of the facility at the end of its active life" is being inserted at the end of the first sentence. These changes are being made for clarification only and do not alter the intended meaning of the regulation.

Sections 66265.112(b)(1) and (2): Language is being added to these sections to require the closure plan to specify when the facility will be partially and finally closed. This change is required to conform to existing Title 22, CCR, Section 67212. The corresponding federal regulation does not include this requirement and, therefore, is less stringent.

Section 66265.112(b)(7) and (c)(1)(B): Language in the 40 CFR version of these two sections, which restricts the requirement to provide an estimate of the expected year of closure to certain facilities, is not being included in the proposed regulations. This change is necessary to conform to existing more stringent Title 22, CCR, Section 67212(b)(4), which requires all facilities to include an estimate of the expected year of closure in their closure plans.

Section 66265.112(b)(8): This is a new section which requires the closure plan submittal to include information needed by the Department to prepare an Initial Study in accordance with the requirements of Title 14, CCR, Section 15063. This regulation is necessary to enable the Department to comply with the requirements of existing state law as set forth in the California Environmental Quality Act (CEQA).

Section 66265.112(c)(3): The word "more" is being changed to "later" and the phrase "has occurred" is being changed to "occurs". These changes are being made to make the sentence structure and wording in this paragraph consistent with that of the previous paragraph (Section 66265.112(c)(2)).

Section 66265.112(d)(1): 40 CFR, Section 265.112(d)(1) requires owners/ operators of surface impoundments, waste piles, land treatment units and landfill units to submit their closure plan to the Department at least 180 days prior to beginning closure. Under 40 CFR, owners/operators of other types of units are only required to submit their closure plans forty-five (45) days in advance of beginning closure. However, existing H&SC, Section 25246(c) is more stringent as it requires all interim status facilities to submit their closure plans at least 180 days in advance. The proposed regulations modify the 40 CFR regulation to conform with this more stringent state statutory requirement.

Section 66265.112(d)(2): This section defines the term "date when the owner or operator expects to begin closure". Existing Title 22, CCR, section 67218 defines this to be "no later than immediately after the date on which the owner or operator expects to receive the final volume of wastes". 40 CFR defines this date, in most cases, to be "within thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous waste". In the context of this regulation "thirty (30) days after" is less stringent than "immediately". Therefore, to conform to the more stringent Title 22 requirement, the 40 CFR language is being incorporated into the proposed regulation with the words "thirty (30) days after" deleted. (The word "within" is also being replaced by "no later than". This is a minor wording change necessary to accommodate the deletion of "thirty (30) days after".) The word "immediately" from the existing Title 22 regulation is not being included in the proposed regulation because of its ambiguity, which could lead to inconsistent interpretation of the regulation. The language of the proposed regulation, however, is consistent with the intent of the existing Title 22 regulation.

40 CFR, Section 265.112(e): This section of the federal regulations allows interim status facilities with approved closure plans to initiate closure activities without first notifying the Department of their intent to begin closure. This federal regulation is not being incorporated into the proposed state regulations because it is less stringent than existing Title 22, CCR, Section 67212, which requires facilities to notify the Department, in all cases, prior to initiating closure activities to give the Department time to review and update the plan, as necessary, prior to its implementation.

Section 66265.113: This section, which is based of 40 CFR, Section 265.113, sets forth the maximum time periods allowed for completing certain portions of the planned closure activities, and the procedures and requirements for extending these time limits. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Sections 66265.113(a)(1)(B)(2.) and (b)(1)(B)(2.): These sections specify one of the conditions which must be met before the Department may extend the closure time limits. The 40 CFR version of this condition is that "there is a reasonable likelihood that the owner or operator or another person will recommence operation" of the facility within one year. The corresponding condition in existing Title 22, CCR, Section 67213, however, is more stringent and specifies that recommencement of operation is limited to a person other than the owner or operator. Therefore the language in the

corresponding 40 CFR regulation is being modified to conform to the more stringent existing Title 22 regulation.

Section 66265.114: This section, which is based on 40 CFR, Section 265.114, specifies the requirements for disposing of or decontaminating all contaminated equipment, structures and soils during the closure period. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Existing Title 22, CCR, Section 67214 is more specific and thus more stringent than the corresponding federal regulation in that it defines "decontaminated" to mean "removing all hazardous waste and residues". 40 CFR does not define the term "decontaminated". Therefore, language is being added to this section to conform to the more stringent existing Title 22 requirement. Additionally, in the following sentence, the words "and residues" are being inserted after "hazardous wastes" for consistency with the above change.

"Section 66265.197" is being added following the word "Sections". This addition is necessary to conform with the revision made to the corresponding federal regulation per Federal Register, September 2, 1988.

Section 66265.115: This section, which is based on 40 CFR, Section 265.115, sets forth the requirements pertaining to closure certification. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

This section requires the closure certification to be signed by a registered professional engineer. The word "qualified" is being added to this requirement to conform with existing Title 22, CCR, Section 67215, and for consistency with the engineering certification requirements found elsewhere throughout these proposed regulations and the 40 CFR regulations. Additionally, the word "registered" in this section is being changed to "registered in California" to conform with the requirements of the Business and Professions Code, Sections 6704 and 6732, which are more stringent than the requirements found in the federal regulations.

Section 66265.116: This section, which is based on 40 CFR, section 265.116, sets forth requirements pertaining to the survey plat which must be prepared and submitted in conjunction with facility closure. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

The term "surveyed benchmarks" is being modified to read "surveyed vertical and horizontal benchmarks". This change is necessary to conform with the requirements of existing Title 22, CCR, Section 67219. The requirement found in the corresponding federal regulation is less specific and, therefore, less stringent.

This section requires the survey plat to be prepared and certified by a professional land surveyor. Language is being added to require that the surveyor be licensed in California to conform to the requirements of existing Title 22, CCR, Section 67219. The corresponding federal requirement is less stringent since it does not require any type of license.

Section 66265.117: This section, which is based on 40 CFR, Section 265.117, sets forth requirements pertaining to post-closure care and use of the facility property. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.117(a): This section is based on, and is necessary to conform to, existing Title 22, CCR, Section 67217(a). This section provides clarifying language not contained in the corresponding federal regulation. However, the requirements of this section are not limited solely to where hazardous wastes will remain after closure, but apply to where waste residues, contaminated materials or contaminated soils are left in place as well. Therefore, this subsection has been modified to reflect this broader requirement.

Section 66265.117(c)(2): The last sentence of this section, pertaining to extension procedures for interim status facilities, is based on, and is necessary to conform to, existing Title 22, CCR, Section 67217(c). The corresponding federal regulation does not contain this requirement and is, therefore, less stringent. However, EPA has pointed out that this subdivision could be interpreted to refer to an extension beyond the end of the post-closure period. Thus, to clarify its interpretation of this regulation, the Department has added the phrase "during the post-closure period" following the word "requirements". The phrase "for interim status facilities," has been deleted because Section 66265.117 only applies to interim status facilities.

Section 66265.117(f): This section is based on, and is necessary to conform to, existing Title 22, CCR, Section 67217(f). This section sets forth requirements pertaining to post-closure use of facility property, which are more stringent than the corresponding federal requirements. The word "Director" in the existing Title 22 regulation is being replaced by the word "Department" for consistency with the terminology used throughout these regulations. An additional

language "No variance may be granted which is inconsistent with Subsection (d) of this section." This language is necessary to clarify that Subsection (d) requirement applies to any variance granted pursuant to Subsection (f). This clarification is necessary to conform with the provisions of 40 CFR, Section 265.117(c).

Section 66265.118: This section, which is based on 40 CFR, Section 265.118, deals with the post-closure plan and specifies the required content of the plan and requirements and procedures pertaining to initial submission, approval and amendment of the plan. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.118(a): The phrase "By May 19, 1981" is being deleted since it is no longer time-relevant. This change does not alter the meaning of the regulation.

Section 66265.118(b): In the proposed state regulations, the phrases "kept at the facility and" and "an updated and" are being added to and the phrase "has been certified" is being deleted from the corresponding 40 CFR language. These changes are necessary to conform to the requirements of existing Title 22, CCR, Section 67218. The corresponding federal regulation is less stringent since it does not require that the plan be kept at the facility until final closure of the facility. Additionally, the federal regulation only requires the facility contact person to keep a copy of the approved (and not necessarily updated) plan after final closure has been certified, which is typically later than the final closure itself.

Section 66265.118(c)(2)(A): The phrase "cap and final cover or other containment systems" is being changed to "cap and final cover and other containment systems". This change is necessary to conform to the requirements of existing Title 22, CCR, Section 67218(a)(3)(B)(1). The corresponding federal regulation is less stringent.

Section 66265.118(c)(4): This is a new section which requires the post-closure plan submittal to include information needed by the Department to prepare an Initial Study in accordance with the requirements of Title 14, CCR, Section 15063. This regulation is necessary to enable the Department to comply with the requirements of existing state law as set forth in the CEQA.

Section 66265.118(d)(1)(B): The words "or the post-closure care period" are being added to conform to the requirements of existing Title 22, CCR, Section 67218(b). This requirement is not contained in the corresponding federal regulation.

Section 66265.118(d)(4): The phrase "sixty (60) days of" in the second sentence of this section is being changed to "sixty (60) days after". This change is necessary for clarity and to correct what appears to be a typographical error in the federal regulation.

Section 66265.118(e): The second sentence of this section defines the term "date the owner or operator expects to begin closure". Existing Title 22, CCR, Section 67218 defines this to be "no later than immediately after the date on which the owner or operator expects to receive the final volume of wastes". 40 CFR defines this date, in most cases, to be "within thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous waste". In the context of this regulation "thirty (30) days after" is less stringent than "immediately". Therefore, to conform to the more stringent Title 22 requirement, the 40 CFR language is being incorporated into the proposed regulation with the words "thirty (30) days after" deleted. (The word "within" is also being replaced by "no later than". This is a minor wording change necessary to accommodate the deletion of "thirty (30) days after".) The word "immediately" from the existing Title 22 regulation is not being included in the proposed regulation because of its ambiguity, which could lead to inconsistent interpretation of the regulation. The language of the proposed regulation, however, is consistent with the intent of the existing Title 22 regulation.

Section 66265.118(f): The phrase "if the Department does not approve the plan" is being changed to "if the Department disapproves the plan". This change is being made for consistency with existing Title 22, CCR, Section 67218(e), and to more accurately reflect the intent expressed by the remainder of this sentence as it reads in the proposed state regulation and the corresponding federal regulation.

Section 66265.118(g): This section addresses the time periods during which the post-closure plan can be modified. The phrase "prior to the end of the post-closure care period" is being changed to "prior to the end or at the end of the post-closure care period". This change is necessary to conform to existing Title 22, CCR, Section 67218(d). This Title 22 regulation gives the Department slightly greater flexibility in the length of time during which it may approve modifications to the plan, and, therefore, in some instances could be more stringent than the corresponding federal regulation.

Section 66265.119: This section, which is based on 40 CFR, Section 265.119, sets forth post-closure notification requirements. This section conforms to the corresponding federal regulation except for

the generic changes specified in the introduction to this SOR and as follows:

Sections 66265.119(a) and (b)(1)(C): The term "other (hazardous waste) disposal unit" is being replaced by the words "area (not limited to only hazardous waste disposal unit)" in these two subsections. This change is necessary to conform to the terminology used in existing Title 22, CCR, Section 67219, which in some instances could be more stringent than the terminology used in the corresponding federal regulations, and to define the term "area".

Section 66265.119(a): The last sentence in this section is based on, and is necessary to conform to, existing Title 22, CCR, Section 67219. This requirement, which pertains to reporting changes occurring after the survey plat is filed, is not contained in the corresponding federal regulation.

Sections 66265.119(b) and (b)(2): The words "or operator" are being deleted from these two sections. This change is necessary to conform to existing Title 22, CCR, Section 67220(a), which requires the owner (not the owner or operator) to record deed notations. The corresponding federal requirement is less stringent since it allows this to be done by either the owner or the operator.

Section 66265.119(b): Missing words "or operator" are being added to the phrase "owner or operator".

Section 66265.119(c): The words "at any time" are being added in the first sentence of this section to conform to the language of the corresponding existing Title 22 regulation (CCR, Section 67220(b)). This change does not alter the meaning of the corresponding federal regulation. Additionally, the word "soils" is being changed to "underlying and surrounding soils". This change is necessary to conform to existing Title 22, CCR, Section 67220(b), which is more specific and, therefore, more stringent than the corresponding federal regulation. The phrase "and the removal activities are completed to the satisfaction of the Department" is also being added in this section to conform to existing Title 22, CCR, Section 67220(b). The corresponding federal regulation is less stringent as it only requires upfront Department approval of planned removal activities as a condition for requesting modification of the deed notation.

Section 66265.120: This section, which is based on 40 CFR, Section 265.120, sets forth the requirements pertaining to post-closure care certification. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

This section requires the post-closure care certification to be signed by a registered professional engineer. The word "qualified" is being added to this requirement for consistency with the engineering certification requirements found elsewhere throughout these proposed regulations and the 40 CFR regulations. Additionally, the word "registered" in this section is being changed to "registered in California" to conform with the requirements of the Business and Professions Code, Sections 6704 and 6732, which are more stringent than the requirements found in the federal regulations.

ARTICLE 8: FINANCIAL REQUIREMENTS

This article is based on 40 CFR, Part 265, Subpart H. The article is also based on Title 22, California Code of Regulations (CCR), sections 67001 through 67033. It sets forth the financial responsibility requirements of hazardous waste facilities that have interim status.

Section 66265.140: This section is based on 40 CFR, section 265.140 which specifies the applicability of regulation sections 265.142, 265.143, 265.147. This section conforms to the corresponding federal regulations except for changes specified in the introduction to this Statement of Reasons and as follows:

Section 66265.140(a): This subsection establishes the applicability of regulations to owners and operators of all hazardous waste facilities. The phrase "as defined in section 66260.10" is being added to clarify that the applicability of the regulations cited above is limited to only those facilities defined in that subsection.

Section 66265.140(b): This subsection lists a specific type of hazardous waste facility that these regulations apply to. The word "disposal" is deleted and replaced with the term "hazardous waste" in order to be consistent in the terminology used throughout the section. The phrase "which are disposal sites" is added to clarify the type of hazardous waste facility being referred to.

Section 66265.140(d): This subsection is added to the corresponding federal regulations because no equivalent provisions exist in federal law. This subsection adds the provisions of existing Title 22, CCR, subsection 67001(c)(1) which state that state government does not include local, city, county government or any subdivisions thereof.

Section 66265.141: This section is based on 40 CFR, section 265.141 which lists terms that are used specifically in regards to the financial regulations in Article 8. The terms are listed here and defined in section 66260.10 which is referenced in the first paragraph. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction of this Statement of Reasons.

Section 66265.142: This section is based on 40 CFR, section 265.142 which describes the procedure for submitting a cost estimate for closure. This section conforms to the corresponding federal regulations except for the generic changes specified in the introduction to this Statement of Reasons and as follows:

Section 66265.142(a): This subsection establishes the authority for requiring that a cost estimate for closure be prepared and gives the citations of regulations that describe

how the facility must be closed. The requirement that the estimate must be prepared and submitted to the Department currently exists in Title 22, CCR, section 67002(a) but has no counterpart in current federal regulations. It is necessary that the Department have documentation of the closure cost estimate so that when a financial mechanism is submitted a determination can be made that the mechanism is sufficient to cover the estimated cost of closing.

Section 66265.142(a)(1): This subsection establishes the authority for how the cost estimate should be prepared. The requirement that the estimate be submitted in accordance with permit application and part B permit application regulations currently exists in Title 22, section 67002(a) but has no counterpart in current federal regulations.

Section 66265.142(b): This subsection establishes the authority for requiring that owners or operators adjust the closure cost estimate for inflation. The requirement that the updated closure cost estimate be submitted to the Department currently exists in Title 22, section 67002(a) but has no counterpart in current federal regulations. This regulation conforms to the federal regulations in that it does not specify that the inflated cost estimate be submitted within 60 days prior to the anniversary date of the establishment of the financial mechanism, but rather when the annual update of the financial mechanism is due to be submitted to the Department. It is necessary that the Department receive the updated closure cost estimate so that a determination can be made as to whether the financial mechanism submitted by the facility for closure is sufficient to cover the updated costs.

Section 66265.143: This section is based on 40 CFR, section 265.143 which establishes the various financial assurance mechanisms for closure to be used to meet the requirements under this Article. This section also establishes that the mechanisms must be demonstrated to the Department. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons and as follows:

Section 66265.143(a): This subsection establishes the closure trust fund as an acceptable mechanism to meet the financial assurance requirements for closure.

Section 66265.143(a)(2): This subsection establishes that the closure trust agreement shall be submitted with original signature, on a form provided by the Department. This requirement currently exists in Title 22, section 67004(b) but has no counterpart in current federal regulations. A standardized form is provided to owners or operators so that there is no deviation from the required language. An original

signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.143(a)(3): This subsection establishes the period of time that payments must be deposited into the trust fund. The requirement that the trust fund be funded over a term of ten (10) years beginning with the establishment of the trust fund exists in Title 22, section 67004(c) as opposed to the federal counterpart that the trust fund be funded over the term of the initial Resource Conservation and Recovery Act (RCRA) permit. The State requires a shorter pay-in period because of several instances when a facility has begun closure before the trust fund has been fully funded thereby creating a situation of having insufficient closure funds. The shorter pay-in period is intended to alleviate such problems.

Section 66265.143(a)(3)(A): This subsection establishes when the first payment shall be made into the trust fund. This requirement currently exists in Title 22, section 67004(c)(1). The counterpart that exists in current federal regulations states that the first payment must be made by the effective date of these regulations. Since these regulations have been effect since 1982 this is no longer applicable.

Section 66265.143(a)(10): This subsection establishes what the value of the trust fund must be before the beginning of final closure. This requirement currently exists in Title 22, CCR section 67004(j) but has no counterpart in current federal regulations. This language is added to clarify that if a facility closes before the end of the pay-in period the facility is still liable to fully fund the trust fund before closure begins.

Section 66265.143(b): This subsection establishes the surety bond guaranteeing payment into the closure trust fund as an acceptable mechanism to meet the financial assurance requirements for closure.

Section 66265.143(b)(2): This subsection establishes that the surety bond shall be submitted with original signatures, on a form provided by the Department. This requirement currently exists in Title 22, section 67005(b) but has no counterpart in the current federal regulations. A standardized form is provided to owners or operators so that there is no deviation from the required language. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.143(b)(3)(B)(2): This subsection establishes that an updated Schedule A of the trust agreement is not required until the trust fund is funded. A parenthetical

reference is deleted because that reference number has changed and no longer exists. A new reference is added.

Section 66265.143(c): This subsection establishes the closure letter of credit as an acceptable mechanism for financial assurance for closure.

Section 66265.143(c)(2): This subsection establishes that the closure letter of credit shall be completed as specified in a form provided by the Department and shall have original signatures. This requirement currently exists in Title 22, section 67007(b) but has no counterpart in current federal regulations. A standardized form is provided to owners or operators so that there is no deviation from the required language. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.143(c)(3)(B)(2): This subsection establishes that an updated Schedule A of the trust agreement is not required until the trust fund is funded. A parenthetical reference is deleted because that reference number has changed and no longer exists. A new reference is added.

Section 66265.143(c)(4): This subsection establishes that the letter of credit be accompanied by a letter that lists pertinent information about the facility for purposes of identification. The term Hazardous Waste Facility Identification Number exists in Title 22, section 67007(d). The identification numbers are the same as those given by EPA.

Section 66265.143(c)(7): This subsection establishes that when the closure cost estimate increases that the amount of credit is increased to cover the difference. The term credit is used to clarify state regulations to mean specifically the "letter of credit".

Section 66265.143(c)(8): This subsection establishes that the Department may draw upon the letter of credit when a determination that the owner or operator has failed to perform final closure has been made. Under federal regulation a determination of when the owner or operator has failed to perform final closure is made pursuant to section 3008 of RCRA. The reference is no longer appropriate and determinations as to when an owner or operator has failed to perform is now made by the Department.

Section 66265.143(d): This subsection establishes closure insurance as an acceptable mechanism for financial assurance for closure.

Section 66265.143(d)(1): This subsection establishes what to submit to meet the requirements for postclosure using

postclosure insurance. Federal regulations state that the owner or operator must submit the certificate of insurance within 90 days of the effective date of these regulations. Post-closure requirements have been in effect since 1982 therefore this requirement is obsolete. It is deleted here.

Section 66265.143(d)(2): This subsection establishes that verification of closure insurance shall be submitted with original signatures, on a form provided by the Department. This requirement currently exists in Title 22, CCR section 67008(b) but has no counterpart in current federal regulations. A standardized form is provided to owners or operators so that there is no deviation from the required language. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.143(d)(8)(C): This subsection establishes that closure insurance shall remain in effect in the event that closure is ordered by the Department or a U.S. district court. State regulations have an additional condition that closure insurance remain in effect in the event closure is ordered by any other governmental agency. In California, hazardous waste facilities are regulated by more than one governmental agency. Therefore, if a facility violates provisions of another regulatory body and closure is ordered the facility is still liable to maintain closure insurance under these regulations.

Section 66265.143(e): This subsection establishes the financial test and corporate guarantee as an acceptable mechanism for financial assurance for closure.

Section 66265.143(e)(3)(A): This subsection establishes that the financial test and corporate guarantee shall be submitted on the owner or operator's official letterhead stationary, shall contain language as specified by the Department, and shall have original signatures. This requirement currently exists in Title 22, CCR section 67009(c)(1) but has no counterpart in the current federal regulations. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.143(e)(4): This subsection establishes the procedure to obtain an extension for submission of the documents specified in this subsection. Extensions are no longer granted as the regulations have been in effect since 1982. This section is therefore deleted.

Section 66265.143(e)(6): This subsection establishes the notice requirements when the owner or operator no longer meet the requirements of this subsection. Federal regulations state that notice must be sent within 90 days after the end of

the facility's fiscal year for which the year-end data show that the owner or operator no longer meets the requirements. State regulations differ in that notice must be sent within 90 days of any occurrence that prevents the owner or operator from meeting the requirements. This is required because the state does not want facilities operating for any extended period of time without a mechanism to meet their financial assurance obligations.

Section 66265.143(e)(10): This subsection establishes the requirements for complying with the regulations by obtaining a "corporate guarantee". The corporate guarantee shall be submitted as specified by the Department, shall be on official letterhead stationary of the parent corporation and shall have original signatures. This requirement currently exists in Title 22, CCR but has no counterpart in the current federal regulations. An original notarized signature is required to ensure that the parent corporation has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.143(f): This subsection establishes the requirements for an alternative mechanism that may be used to meet the requirements for financial assurance. This subsection applies to non-RCRA facilities only. Facilities which manage solely non-RCRA hazardous waste are not regulated by EPA and therefore cannot require the Department to regulate such facilities in any particular manner.

Section 66265.143(g): This subsection establishes the use of multiple financial mechanisms to satisfy the requirements of this section. This subsection has been expanded to include the financial test as one of the mechanisms which may be used to satisfy the requirements of this section. This change is consistent with section 66265.147(a)(7), which includes the financial test as a mechanism which may be used to satisfy the requirements of that section. This subsection was formerly identified as subsection (f). With the addition of the alternative financial mechanism as an option this subsection becomes identified as subsection (g).

Section 66265.143(h): This subsection establishes the use of one or more financial mechanisms for multiple facilities to satisfy the requirements of this section. This subsection was formerly identified as subsection (g). The federal regulations refer state that an owner or operator "may" use a "single" mechanism to satisfy the requirements of this section. Since a combination of mechanisms may be used to cover one facility, it is logical that a combination of mechanisms may be used to satisfy the requirements of this section. With the addition of the alternative financial mechanism as an option this subsection becomes identified as

subsection (h). Reference to facilities in more than one region is deleted as it applies only at the federal level.

Section 66265.143(i): This subsection establishes the requirements for release from the financial assurance for postclosure care. This subsection was formerly identified a subsection (h). With the addition of the alternative mechanism as an option this subsection becomes identified as subsection (i).

Section 66265.143(i)(2): This subsection establishes the requirements for release from the requirements of financial assurance for closure in the event of transfer of ownership or operational control. This requirement currently exists in Title 22, CCR section 67013(b) but has no counterpart in current federal regulations.

Section 66265.144: This section is based on 40 CFR, section 265.144 which establishes the requirement to prepare a cost estimate for postclosure care. This section conforms to corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons and as follows:

Section 66265.144(a): This subsection establishes the authority for requiring that a cost estimate for postclosure care be prepared. It lists the regulatory citations for preparing the cost-estimate. The requirement that the cost-estimate be prepared and submitted to the Department currently exists in Title 22, CCR, section 67014 but has no counterpart in current federal regulations. It is necessary that the Department have documentation of the postclosure cost estimate so that when a financial mechanism is submitted a determination can be made that the mechanism is sufficient to cover the estimated cost of postclosure.

Section 66265.144 (a) (2): This subsection establishes the number of years postclosure cost estimates must be multiplied by the determined amount of postclosure funds to be established. Federal regulations do not specify the number to be referred to. The number of years is noted here so that the reader does not have to turn outside of the subsection for the number of years.

Section 66265.145: This section is based on 40 CFR, section 265.145 which establishes the various financial assurance mechanisms for postclosure to be used to meet the requirements under this Article. This section also establishes that the mechanisms must be demonstrated to the Department. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons and as follows:

Section 66265.145(a): This subsection establishes the postclosure trust fund as an acceptable mechanism to meet the financial assurance requirements for postclosure.

Section 66265.145(a)(2): This subsection establishes that the postclosure trust agreement shall be submitted with original signatures, on a form provided by the Department. This requirement currently exists in Title 22, section 67016(b) but has no counterpart in current federal regulations. A standardized form is provided to owners or operators so that there is no deviation from the required language. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.145(a)(3): This subsection establishes the period of time that payments must be deposited into the trust fund. The requirement that the trust fund be funded over a term of ten (10) years beginning with the establishment of the trust fund currently exists in Title 22, section 67016(c) as opposed to the federal counterpart that the trust fund be funded over the term of the initial RCRA permit. The State requires a shorter pay-in period because of several instances when a facility has begun closure before the trust fund has been fully funded thereby creating a situation of having insufficient postclosure funds. The shorter pay-in period is intended to alleviate such problems.

Section 66265.145(a)(3)(A): This subsection establishes when the first payment shall be made into the trust fund for existing facilities. This requirement currently exists in Title 22, section 67016(c)(1). The federal counterpart states that the first payment is due by the effective date of the regulations. These regulations have been in effect since 1982. All facilities must be in compliance at this time. Therefore this section of the regulation is deleted and replaced with the state language.

Section 66265.145(a)(10): This subsection establishes what the value of the trust fund must be before the beginning of final postclosure. This language currently exists in Title 22, section 67014(j) CCR but has no counterpart in current federal regulations. This language is added to clarify that if a facility closes before the end of the pay-in period the facility is still liable to fully fund the trust fund before postclosure begins.

Section 66265.145(b): This subsection establishes the surety bond guaranteeing payment into the postclosure trust fund as an acceptable mechanism to meet the financial assurance requirements for postclosure.

Section 66265.145(b)(2): This subsection establishes that the surety bond shall be submitted with original signatures, on a

form provided by the Department. This requirement currently exists in Title 22, section 67017(b) but has no counterpart in current federal regulations. A standardized form is provided to owners or operators so that there is no deviation from the required language. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.145(b)(3)(B)(2): This subsection establishes that an updated Schedule A of the trust agreement is not required until the trust fund is funded. A parenthetical reference is deleted because that reference number has changed and no longer exists. A new reference is added.

Section 66265.145(c): This subsection establishes the postclosure letter of credit as an acceptable mechanism for financial assurance for postclosure.

Section 66265.145(c)(2): This subsection establishes that the postclosure letter of credit shall be completed as specified in a form provided by the Department, and shall have original signatures. This requirement currently exists in Title 22, section 67019(b) but has no counterpart in current federal regulations. A standardized form is provided to owners or operators so that there is no deviation from the required language. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.145(c)(3)(B)(2): This subsection establishes that an updated Schedule A of the trust agreement is not required until the trust fund is funded. A parenthetical reference is deleted because that reference number has changed and no longer exists. A new reference is added.

Section 66265.145(c)(4): This subsection establishes that the letter of credit be accompanied by a letter that lists pertinent information about the facility for purposes of identification. The term Hazardous Waste Facility Identification Number exists in Title 22, section 67019(d). The identification numbers are the same as those given by EPA.

Section 66265.145(c)(7): This subsection establishes that when the postclosure cost estimate increases that the amount of credit is increased to cover the difference. The term credit is used to clarify state regulations to mean specifically the "letter of" credit.

Section 66265.145(c)(9): This subsection establishes that the Department may draw upon the letter of credit when a determination has been made that the owner or operator has failed to perform final postclosure. Under federal regulation

a determination of when the owner or operator has failed to perform final postclosure is made pursuant to section 3008 of RCRA. The reference is no longer appropriate and determinations as to when an owner or operator has failed to perform are now made by the Department.

Section 66265.145(d): This subsection establishes postclosure insurance as an acceptable mechanism for financial assurance for postclosure.

Section 66265.145(d)(2): This subsection establishes that verification of postclosure insurance shall be submitted with original signatures, on a form provided by the Department. This requirement currently exists in Title 22, section 67020(b) but has no counterpart in current federal regulations. A standardized form is provided to owners or operators so that there is no deviation from the required language. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.145(d)(8)(C): This subsection establishes that postclosure insurance remain in effect in the event that closure is ordered by the Department or a U.S. district court. State regulations have an additional condition that postclosure insurance remain in effect in the event closure is ordered by any other governmental agency. In California, hazardous waste facilities are regulated by more than one governmental agency. Therefore, if a facility violates provisions of another regulatory body and postclosure is ordered the facility is still liable to maintain postclosure insurance under these regulations.

Section 66265.145(e): This subsection establishes the financial test and corporate guarantee as an acceptable mechanism for financial assurance for postclosure.

Section 66265.145(e)(3)(A): This subsection establishes that the financial test and corporate guarantee for postclosure shall be submitted on the owner's or operator's official letterhead stationary, shall contain language as specified by the Department, and shall have original signatures. This requirement currently exists in Title 22, section 67021(c)(1) but has no counterpart in current federal regulations. An original signature is required to ensure that the owner or operator has reviewed the document and by virtue of the signature binds the company to the provisions therein.

Section 66265.145(e)(4): This subsection establishes the procedure to obtain an extension for submission of the documents specified in this subsection. Extensions are no longer granted as the regulations have been in effect since 1982. This section is therefore deleted.

Section 66265.145(e)(6): This subsection establishes the notice requirements when the owner or operator no longer meet the requirements of this subsection. Federal regulations state that notice must be sent within 90 days after the end of the facility's fiscal year for which the year-end data show that the owner or operator no longer meets the requirements. State regulations differ in that notice must be sent within 90 days of any occurrence that prevents the owner or operator from meeting the requirements. This is required because the state does not want facilities operating for any extended period of time without a mechanism to meet their financial assurance obligations.

Section 66265.145(e)(11): This subsection establishes the requirements for complying with the regulations by obtaining a "corporate guarantee". The corporate guarantee document shall be submitted as specified by a form provided by the Department, shall be submitted on official letterhead stationary of the parent corporation, and shall have original signatures. This requirement currently exists in Title 22, CCR, section 67021(k) but has no counterpart in current federal regulations.

Section 66265.145(f): This subsection establishes the requirements for an alternative mechanism that may be used to meet the requirements for financial assurance for postclosure. This subsection applies to non-RCRA facilities only. Facilities which manage solely non-RCRA hazardous waste are not regulated by EPA therefore cannot require the Department to regulate such facilities in any particular manner.

Section 66265.145(g): This subsection establishes the use of multiple financial mechanisms to satisfy the requirements of this section. This subsection has been expanded to include the financial test as a mechanism which may satisfy the requirements of this section. This change is consistent with section 66265.147(a)(7) which includes the financial test as a mechanism which satisfy the requirements of that section. This subsection was formerly identified as subsection (f). With the addition of the alternative financial mechanism as an option this subsection becomes identified as subsection (g).

Section 66265.145(h): This subsection establishes the use of a one or more financial mechanisms for multiple facilities to satisfy the requirements of this section. The federal regulations state that an owner or operator "may" use a "single" mechanism to satisfy the requirements of this section. Since a combination of of mechanisms may be used to cover one facility, it is logical that a combination of mechanisms may be used to satisfy the requirements of this section. This subsection was formerly identified as subsection (g). With the addition of the alternative financial mechanism as an option this subsection becomes identified as

subsection (h). The regulations discuss the situation in which a mechanism is used to cover facilities in more than one region. The term regions as used here refers to the federal differentiation of areas within the continental U.S. Although the state is concerned about the use of a mechanism that is used to cover facilities in more than one region, the state cannot require a facility to demonstrate coverage to another jurisdiction outside its jurisdiction. Therefore this sentence is deleted.

Section 66265.145(i): This subsection establishes the requirements for release from the financial assurance for postclosure care. This subsection was formerly identified as subsection (h). With the addition of the alternative mechanism as an option this subsection becomes identified as subsection (i).

The requirement that the Department will provide written notification to the owner or operator that all the requirements have been met at the request of the owner or operator currently exists in Title 22, section 67025. The counterpart in the federal regulations states that the written notification will be provided with no reference to a request by the owner or operator.

Section 66265.145(i)(2): This subsection establishes the requirements for release from the requirements of financial assurance for postclosure in the event of transfer of ownership or operational control. This requirement currently exists in Title 22, CCR section 67025(b) but has no counterpart in current federal regulations.

Section 66265.146: This section is based on 40 CFR, section 265.146. It establishes the requirements for financial assurance for both closure and postclosure for one or more facilities by the use of a single mechanism. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons and the addition of the alternative mechanism option referenced in section 66265.143(f) and 66265.145(f).

Section 66265.147: This section is based on 40 CFR, section 265.147. It establishes the financial responsibility requirements for bodily injury and property damage to third parties caused by sudden and non-sudden accidental occurrences arising from the operation of the facility. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons and as follows:

Section 66265.147(a): This subsection establishes the liability requirements for sudden accidental occurrences for hazardous waste treatment facilities. The requirement that

liability coverage must be on a per facility basis currently exists in Title 22, CCR, section 67027(b) but has no counterpart in current federal regulations.

Section 66265.147(a)(1)(i): This subsection establishes the requirements for the wording of the Hazardous Waste Facility Liability Endorsement and the Certificate of Insurance. This section is duplicated in subsection 66265.147(b). This subsection is being deleted here and will be reinserted in a new subsection number within the body of this section.

Section 66265.147(a)(1)(ii): This subsection establishes the requirement that insurers must, at a minimum, be licensed to provide insurance in one or more states. This section is duplicated in subsection 66265.147(b). This subsection is being deleted here and will be reinserted in a new subsection number within the body of this section.

Section 66265.147(a)(6): This subsection establishes the option of using an alternative mechanism as described in section 66265.147(i) to meet the requirement of this section. This requirement exists in Title 22, CCR, section 66027(c)(3) but has no counterpart in current federal regulations.

Section 66265.147(b): This subsection establishes the liability requirements for non-sudden accidental occurrences for hazardous waste treatment facilities. The requirement that liability coverage must be on a per facility basis currently exists in Title 22, CCR, section 67028(b) but has no counterpart in current federal regulations.

Section 66265.147(b)(1)(i): This subsection establishes the requirements for the wording of the Hazardous Waste Facility Liability Endorsement and the Certificate of Insurance. This section is duplicated in subsection 66265.147(a). This subsection is being deleted here and will be reinserted in a new subsection number within the body of this section.

Section 66265.147(b)(1)(ii): This subsection establishes the requirement that insurers must as a minimum be licensed to provide insurance in one or more states. This section is duplicated in subsection 66265.147(a). This subsection is being deleted here and will be reinserted in a new subsection number within the body of this section.

Section 66265.147(b)(6): This subsection establishes the option of using an alternative mechanism as described in section 66265.147(i) to meet the requirement of this section. This requirement currently exists in Title 22, CCR, section 67028(c)(3) but has no counterpart in current federal regulations.

Section 66265.147(b)(4): This subsection establishes the dates when liability insurance must be submitted. This subsection is no longer appropriate as the dates for full compliance with the liability requirements has passed. This subsection is therefore obsolete and is deleted.

Section 66265.147(c): This subsection establishes that a request for a vaiance from the requirements of this section may be submitted to the Department. This was originally identified as subsection (d).

Section 66265.147(d): This subsection establishes that the Department may adjust the level of financial responsibility for a facility or a group of facilities based on the degree and duration of risk association with a facility or a group of facilities. This subsection was originally identified as subsection (e).

Section 66265.147(e): This subsection establishes the timeframe for maintaining liability coverage. This subsection was originally identified as subsection (f).

Section 66265.147(f): This subsection establishes the requirements for liability insurance for sudden and non-sudden accidental occurrences. The requirement for liability insurance currently exists in Title 22, CCR, section 67029 but has no counterpart in current federal regulations. This subsection was originally identified as subsection (c). It has been relettered because it was out of sequence as subsection (c). All subsequent subsections have been relettered accordingly.

Section 66265.147(g): This subsection establishes the use of the financial test for liability coverage as an accepted mechanism for financial assurance.

Section 66265.147(g)(3)(a): This subsection establishes the requirement that the letter from the chief financial officer shall be submitted on the official letterhead stationary of the owner or operator, and shall have original signatures. This requirement currently exists in Title 22, CCR, section 67030(c)(1) but has no counterpart in current federal regulations. The last sentence in this subsection is rewritten into two sentences because the federal counterpart is lengthy and confusing.

Section 66265.147(g)(4): This subsection establishes the procedure to obtain an extension for submission of the documents specified in this subsection. Extensions are no longer granted as the regulations have been in effect since 1985. This section is therefore deleted. All subsequent subsections have been renumbered accordingly.

Section 66265.147(g)(5): This subsection establishes the notification procedures when the owner or operator no longer meets the requirement of this subsection. The requirement that notice be sent to the Department of the owner's or operator's intent to obtain the required insurance within 90 days after any occurrence that prevents the owner or operator from meeting the test requirements appears in Title 22, CCR, section 67030(f) but has no counterpart in current federal law. The requirement that evidence of insurance must also be submitted to the Department within 90 days after any occurrence that prevents the owner or operator from meeting the requirements also appears in Title 22, CCR, section 66030(f) and also has no counterpart in federal regulations.

Section 66265.147(g)(6): This subsection establishes the requirement that the owner or operator may have to submit reports of the financial condition of the facility to verify that the owner or operator still meets the requirements of this section. This requirement currently exists in Title 22, CCR, section 67030(g) but has no counterpart in current federal regulations.

Section 66265.147(g)(8): This subsection establishes that the Department has the authority to approve a decrease in the current postclosure estimate for which this test demonstrates financial assurance if the amount of the cost estimate exceeds the remaining cost of postclosure care. This requirement currently exists in Title 22, CCR, section 67030(i) but has no counterpart in current federal regulations.

Section 66265.147(g)(9): This subsection establishes when an owner or operator no longer has to submit the items required by the financial test. This requirement currently exists in Title 22, CCR section 67030 but has no counterpart in current federal regulations.

Section 66265.147(h): This subsection establishes the corporate guarantee for liability coverage as an acceptable mechanism to meet the requirements of this section. This subsection was formerly identified as subsection (g).

Section 66265.147(i): This subsection establishes the letter of credit for liability coverage as an acceptable mechanism to meet the requirements of this section. This subsection was formerly identified as subsection (h).

Section 66265.147(j): This subsection establishes the payment bond for liability coverage as an acceptable mechanism to meet the requirements of this section. This subsection was formerly identified as subsection (i).

Section 66265.147(k): This subsection establishes the trust fund for liability coverage as an acceptable mechanism to meet

the requirements of this section. This subsection was formerly identified as subsection (j).

Section 66265.147(1): This subsection establishes an alternative mechanism for liability coverage as an approved mechanism to meet the requirements of this section. This requirement currently exists in Title 22, CCR, section 67031 but has no counterpart in current federal regulations.

Section 66265.148: This section is based on 40 CFR, section 265.148. It establishes the requirements of the owner or operator or financial institutions when they are no longer capable of meeting the financial assurance requirements of this article. This section conforms to existing federal regulations except for the generic changes specified in the introduction to this Statement of Reasons and as follows:

Section 66265.148(b): This subsection establishes the circumstances under which an owner or operator is deemed to be without the required financial assurance or liability coverage. Federal language cites the regulation references for meeting the financial assurance requirements. This is deleted and replaced with the state language which clearly states what requirements must be met.

Section 66265.149: This section is based on 40 CFR, section 265.149. It establishes the option to use a state-required mechanism in state's where EPA is administering the requirements of this article. This section will no longer be appropriate when the state is authorized to conduct their own program. Therefore, this section is deleted.

Section 66265.150: This section is based on 40 CFR, section 265.150. It establishes to any state the option to assume the financial assurance responsibility for those facilities operating in the state. It has been determined that this state cannot assume such responsibility without statutory authorization. Therefore, this section is deleted.

ARTICLE 9: USE AND MANAGEMENT OF CONTAINERS

This article is based on Subpart I of 40 Code of Federal Regulations (CFR) Part 265. It sets forth the requirements for owners and operators of interim status facilities that use containers for managing hazardous wastes.

Section 66265.170: This section, which is based on 40 CFR, Section 265.170, specifies the applicability of this article. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons (SOR).

Section 66265.171: This section, which is based on 40 CFR, section 265.171, sets forth the requirement to transfer hazardous waste to a container of good condition if the container holding the hazardous waste is not in good condition. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.171: The existing Title 22 regulation, unlike federal regulation, specifies examples of conditions under which a container is not to be considered in good condition. Therefore, to conform to existing Title 22, California Code of Regulations (CCR), section 67241, and to clarify the regulation, the statement "(e.g., severe rusting, apparent structural defects)" is being incorporated into the proposed state regulation.

Section 66265.172: This section, which is based on 40 CFR, section 265.172, sets forth requirements for compatibility of a hazardous waste with the material of the container or its lining. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.173: This section, which is based on 40 CFR, section 265.173, specifies requirements for handling containers holding hazardous wastes. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.174: This section, which is based on 40 CFR, Section 264.174, sets forth requirements for weekly inspections of container storage areas. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.174: The word "where" is being changed to "used for". This is a sentence structure change necessitated by the generic change of "stored" to "storage of transfer".

Section 66265.174: The phrase "for leaks and for deterioration" is being changed to "for leaking containers and for deterioration of containers and the containment system". This change is necessary to conform with existing Title 22, CCR, Section 67244, which is more specific and, therefore, more stringent than the corresponding federal regulation.

Section 66265.176: This section, which is based on 40 CFR, Section 265.176, sets forth special requirements for placement of containers holding ignitable or reactive waste. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.177: This section, which is based on 40 CFR, Section 265.177, sets forth special requirements for management of incompatible wastes. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.177(b): Existing Title 22, CCR, Section 67247 is more stringent than the corresponding federal regulation, because the state regulation does not exempt under any condition the containment of hazardous wastes in an unwashed container that previously held an incompatible waste or material. Therefore, the federal exemption found in 40 CFR, Section 265.177(b) is not being included in the proposed state regulations.

ARTICLE 10: TANK SYSTEMS

This article is based on Subpart J of 40 CFR, Part 265. It sets forth the requirements for owners and operators of interim status facilities that use tank systems for managing hazardous wastes.

Section 66265.190: This section is based on 40 CFR, Section 265.190, which specifies the type of tanks to which the requirements of this article apply. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

A reference to new subsection (c) is being added to the introductory paragraph of Section 66265.190. The introductory paragraph lists the subsections not subject to the requirements of this article. New subsection (c) is one of those subsections. Additionally, the phrase "owners or operators" in the introductory paragraph is being changed to "owners and operators" for clarification.

Section 66265.190(a) & (b): The word "tanks" in these subsections has been changed to "tank systems" pursuant to changes made to corresponding federal regulations (Federal Register Vol. 53, #171, 9/2/88.).

Section 66265.190(b): Reference to Section 66265.193 is changed to 66265.193(a) which was found to be a typographic error.

Section 66265.190(c): This subsection provides reference to the definition of "underground tank" which is based on existing Title 22, CCR, Section 67250(d).

Section 66265.191: This section is based on 40 CFR, Section 265.191, and sets forth requirements for the design and the structural integrity assessment for existing interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.191(a): A new language "which was in existence on or before July 14, 1986," is being added to establish when the regulations were promulgated thus establishing the definition of "existing", the term which is used in the corresponding federal regulation.

Section 66265.191(a) and (c): These sections require interim status facilities with tank systems which do not meet the secondary containment requirements of section 66265.193 by certain dates to obtain an assessment of the structural integrity of the tank system(s) by the same dates. Existing

Title 22 does not contain any comparable requirements for interim status facilities. However, Resource Conservation and Recovery Act (RCRA) interim status facilities were required under 40 CFR, Section 66265.191 to obtain an assessment meeting the requirements of 40 CFR, Section 265.191(b) by January 12, 1988, if they did not have secondary containment meeting the requirements of 40 CFR, Section 265.193 as of that date. (January 12, 1988 was one year after the effective date of the federal regulations requiring secondary containment and this assessment.) For tank systems used to manage materials that become/became hazardous wastes subsequent to July 14, 1986 (the date these federal regulations were issued), the assessment is/was required to be conducted, under 40 CFR, Section 265.191(c), within twelve (12) months after the date the materials become/became hazardous wastes. The proposed state regulations contained in Section 66265.191 extend this assessment requirement to non-RCRA interim status tank systems. Non-RCRA tanks are those tanks containing non-RCRA hazardous wastes, and tanks containing RCRA hazardous wastes if the owner or operator is a conditionally exempt small quantity generator (as defined in 40 CFR, Section 261.5) or a 100 to 1000 kg per month generator (as defined in 40 CFR, Section 265.201). The deadlines for obtaining this assessment for non-RCRA tank systems are consistent with the RCRA deadlines specified in 40 CFR (and Section 66265.191(a) and (c)), but the non-RCRA deadlines are measured from the effective date of these proposed state regulations (rather than the federal regulations). This should allow facilities with non-RCRA tank systems adequate time (i.e., one (1) year) to obtain the required assessment. The Department is proposing to apply these RCRA requirements to non-RCRA tank systems in order to maintain consistency between the state regulatory requirements for RCRA and non-RCRA facilities. Additionally, this assessment requirement is further warranted by the high risk of spills and leaks from tank systems resulting in environmental contamination, public health risks, and costly cleanups. The assessment required by proposed Section 66265.191, for tank systems not meeting secondary containment requirements, should result in the early identification of tank system problems requiring repair in order to prevent spills and leaks.

Sections 66265.191(a) and (b)(5)(B): These sections require a certification or assessment by an "independent, qualified, registered professional engineer". This is being revised to stipulate that the engineer must be "registered in California", to conform with the requirements of the Business and Professions Code, Sections 6704 and 6732, which are more stringent than the requirements found in the federal regulations.

Section 66265.191(a)(2) & (c)(2): These subsections have been reformed authorizing the Office of Administrative Law (OAL) to

incorporate the effective dates of these regulations when these regulations are enacted. These changes have been made per the OAL comment for purposes of clarity only.

Section 66265.191(c): In addition to the changes discussed above, the wording of this section is being slightly modified for clarification only; no change is being made to the intended meaning of the corresponding federal regulation.

Section 66265.192: This section is based on 40 CFR, Section 265.192, and sets forth requirements for the design and the structural integrity assessment for new interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Sections 66265.192(a) and (b): These sections require a certification or inspection by an "independent, qualified, registered professional engineer". This is being revised to stipulate that the engineer must be "registered in California", to conform with the requirements of the Business and Professions Code, Sections 6704 and 6732, which are more stringent than the requirements found in the federal regulations.

Section 66265.192(a): This section requires an assessment attesting that the tank system is acceptable for the management of hazardous waste. Language is being added to this section to require that this assessment also attest "that the tanks and containment system are suitably designed to achieve the requirements of this article". This is a nonsubstantive change intended to clarify that the tank and containment system must meet the requirements of this article in order to be considered acceptable.

Section 66265.192(a): Additionally, language is being added to this section to specify that this assessment must be obtained prior to placing the tank system in service and must be kept on file at the facility. The corresponding federal regulation does not specify when the assessment must be obtained or what must be done with it after it is obtained. This lack of specificity in the federal regulation makes it difficult for facilities to comply with, and for the Department to enforce, this requirement. The proposed regulations require that the assessment be obtained prior to placing the tank in service so that any structural problems which could result in leaks, ruptures, etc. can be identified and corrected before hazardous wastes are placed in the tank. The requirement that the assessment be kept on file at the facility is consistent with the comparable requirement for existing tank systems contained in Section 66265.191(a).

Section 66265.192(a): The word "also" is being added in the last sentence of this section for clarification only.

Section 66265.193: This section, which is based on 40 CFR, Section 265.193, specifies the requirements pertaining to containment and detection of hazardous waste releases for interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.193(a): Paragraphs (1)-(6) of this section provide a phased-in schedule for different types of interim status tank systems for complying with the secondary containment requirements of Section 66265.193. Although existing state regulations do not contain any secondary containment requirements for interim status tank systems, RCRA interim status facilities are currently required to comply with the secondary containment requirements set forth in 40 CFR, Section 265.193. 40 CFR, Section 265.193(a) provides a phased-in schedule for facility compliance with the federal secondary containment requirements. The deadline by which a given RCRA tank system must meet the federal secondary containment requirements is based on the type of waste handled, the age of the tank system or the facility's age, and when the material managed in the tank becomes a hazardous waste. The federal compliance deadlines are measured from the effective date of the federal regulations implementing these secondary containment requirements (January 12, 1987). The proposed state regulations contained in Section 66265.193 extend the federal secondary containment requirements to non-RCRA tank systems. (See the SOR for Sections 66265.191(a) and (c) for the definition of non-RCRA tank.) The proposed deadlines for complying with the secondary containment requirements set forth in Section 66265.193 for non-RCRA tank systems are consistent with the RCRA deadlines specified in 40 CFR (and Section 66265.193(a)), but the non-RCRA deadlines are measured from the effective date of these proposed state regulations (rather than the federal regulations). This phased-in compliance schedule, which was developed by the U.S. Environmental Protection Agency (EPA) and is being adopted by the Department in these proposed regulations, is based upon: (1) two years as the estimated time for most facilities to obtain approvals for and install a secondary containment system; and (2) fifteen years as the median age to failure for underground tank systems (no reliable time-to-failure data is available for other types of tanks). In addition, the phased-in schedule is intended to enable both facilities and the Department to give first priority to those tank systems in greatest need of adequate secondary containment. The Department is proposing to apply these RCRA requirements to non-RCRA tank systems in order to maintain consistency between the state regulatory requirements for RCRA and non-RCRA

facilities. Additionally, these secondary containment requirements are further warranted by the high risk of spills and leaks from tank systems resulting in environmental contamination, public health risks, and costly cleanups. Secondary containment meeting the requirements of the federal regulations and these proposed state regulations will protect the environment and the public from the dangers associated with tank system leaks and spills, as well as preventing/minimizing costly cleanups.

Sections 66265.193(a)(2), (a)(3) & (a)(4): These subsections make parenthetical reference to "51 Federal Register, Section 25479, July 14, 1986, 51 Federal Register 29430, August 15, 1986." For purposes of avoiding any ambiguity of these provisions, this language is being eliminated and replaced with "which were in existence on or before July 14, 1986." This change has been made per OAL comment.

Section 66265.193(a)(2)(B)(1): This subsection has been eliminated because it establishes effective dates for tanks containing non-RCRA wastes only whereas Section 66265.193(a)(2) exclusively addresses tanks containing RCRA wastes F020, F021, F023, F026 and F027.

Section 66265.193(a)(2)(B)(2): Requirements of this subsection have been merged into Section 66265.193(a)(2)(B). This change has been made for the purpose of rearranging Section 66265.193(a)(2).

Section 66265.193(a)(5): This subsection makes parenthetical reference to "from the effective date of this these regulations." For purposes of clarity this language is being eliminated and replaced with a new language "which were in existence on or before [the effective date of these regulations]. This change does not change the contents of the regulation.

Sections 66265.193(a)(2)(B), (a)(3)(B), (a)(5) & (a)(6)(B): These subsections refer to "the effective date of these regulations, . . ." Per OAL request, for purposes of clarity, these subsections are being modified and OAL is directed to insert the actual effective date when these regulations are enacted.

Section 66265.193(c)(4)(B): A new language "(33 U.S.C. Section 1311, 1314 and 1342, respectively)" is being added as references to sections of the Federal Clean Water Act, as amended.

Sections 66265.193(e)(1)(B) and (e)(2)(B): The wording in these paragraphs is also being modified to clarify that the system must either prevent or be capable of containing both run-on and infiltration. The wording in the corresponding

federal regulations could be erroneously interpreted to only require prevention/ containment of run-on or infiltration. This interpretation, however, is not logical in the framework of environmental protection. Many tank systems could be subject to both run-on and infiltration from a storm, and protecting against one and not the other would negate the intended effect of this regulation. These paragraphs are also being modified to make it clear that the required excess capacity pertains to the run-on and infiltration (rather than the precipitation itself) from a 25 year, 24 hour storm. This change is necessary for internal consistency within these paragraphs.

Section 66265.193(f)(3): Addition of the words "and sealless valves" following the word "pumps" is to conform with the changes made to the corresponding federal regulation pursuant to Federal Register Vol. 53, #171, 9/2/1988.

Section 66265.193(g): This section is based on 40 CFR, Section 265.193(g) and provides for a variance from the secondary containment requirements of section 66265.193 if certain conditions are met. Language is being added to this section limiting the variance to "existing above-ground tanks in place". This is consistent with the proposed variance provision for permitted facilities (section 66264.193(g)) and existing Title 22 secondary containment requirements for permitted facilities (CCR, Section 67251(b)). This added language makes the proposed regulation more stringent than both existing federal and state regulations for interim status facilities. However, existing permitted tanks are as safe or safer (in terms of the risk of leaks, etc.) than existing interim status tanks, because of the more stringent design standards set forth in the regulations for permitted facilities (see Sections 66264.191 and 66265.191). Therefore, the Department believes that, in the interests of environmental and public health protection, the secondary containment variance provision for interim status tanks should be no less stringent than the comparable provision for permitted tanks.

Section 66265.193(h)(1): The sentence pertaining to variances for new tank systems is being deleted to conform to the revision in Section 66265.193(g), discussed above. The words "according to the following schedule: (i) For existing tank systems" are being deleted since they are no longer necessary and are confusing given the deletion of the language relating to new tank systems.

Section 66265.193(h)(1): The word "must" is being replaced by the words "is required to". As is discussed in the generic change portion of the introduction to this SOR, the word "must" is being changed to "shall" throughout the proposed regulations to conform with the standard terminology used in

Title 22, CCR. In this particular section changing "must" to "shall" would not be appropriate grammatically. For this section, the use of the term "is required to" accomplishes the same intent as the generic change and is grammatically correct.

Section 66265.193(i)(2): This section requires an inspection by an "independent, qualified, registered professional engineer". This is being revised to stipulate that the engineer must be "registered in California", to conform with the requirements of the Business and Professions Code, Sections 6704 and 6732, which are more stringent than the requirements found in the federal regulations.

Section 66265.194: This section is based on 40 CFR, Section 265.194 and specifies general operating requirements for interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.194(b)(3): Language is being added to this section specifying the minimum required freeboard for uncovered tanks and the allowable exceptions to this requirement. This revision is necessary to conform with the requirements of existing Title 22, CCR, Section 67257(c) which are more stringent than the requirements in the corresponding federal regulation.

Section 66265.194(d): This section is being added to conform with existing Title 22, CCR, Section 67257(a), which requires that management of hazardous waste in tanks comply with Section 66265.17(b), which specifies general requirements for handling ignitable, reactive and incompatible wastes. This requirement is not contained in the corresponding federal regulation.

Section 66265.195: This section is based on 40 CFR, Section 265.195 and specifies inspection requirements for interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.195(a)(5): This section is being added to conform with existing Title 22, CCR, Section 67259(a)(3), which requires uncovered tanks to be inspected at least once each operating day to ensure compliance with the minimum freeboard requirements of Section 66265.194(b)(3). The corresponding federal regulation does not contain this requirement and, therefore, is less stringent.

Section 66265.196: This section is based on 40 CFR, Section 265.196 and specifies the requirements for responding to hazardous waste leaks and spills and for handling leaking or unfit interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.196(a): This section is being added to make it clear that the facility must comply with the general emergency response procedures set forth in Section 66265.56, in addition to the requirements of Section 66265.196. The corresponding federal regulation does not reference the general emergency response procedures, and could thus lead to the misinterpretation that the procedures set forth in Section 66265.196 are a substitute for (rather than an addition to) the requirements of Section 66265.56.

Section 66265.196(e)(1): This section requires the facility to notify the Department in the event of a release to the environment. The last sentence in the corresponding federal regulation, which states that this requirement can be satisfied by complying with 40 CFR, Part 302, is not being included in the proposed regulation since this would not satisfy the more stringent notification requirements contained in existing Title 22, CCR, Section 67145.

Section 66265.196(e)(2): The phrase "but is not exempt from the requirements of Section 66265.56" is being inserted for clarification. This change does not alter the requirements of the regulations. Additionally, the phrase "that is" is being changed to "if it is" for clarity and grammatical accuracy.

Section 66265.196(g): This section requires a certification of major tank repairs by an "independent, qualified, registered professional engineer". This is being revised to stipulate that the engineer must be "registered in California", to conform with the requirements of the Business and Professions Code, Sections 6704 and 6732, which are more stringent than the requirements found in the federal regulations.

Section 66265.197: This section is based on 40 CFR, Section 265.197 and specifies closure and post-closure requirements for interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.197(c): The phrase "is not exempt" is being changed to "has not been granted a variance" for consistency with the terminology being used in Section 66265.193(g), which is referred to by this sentence.

Section 66265.198: This section is based on 40 CFR, Section 265.198 and specifies special requirements for managing ignitable or reactive wastes in interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.199: This section is based on 40 CFR, Section 265.199 and specifies special requirements for managing incompatible wastes in interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.200: This section is based on 40 CFR, Section 265.200 and specifies waste analysis and trial test requirements for management of hazardous waste in interim status tank systems. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

The word "to" is being inserted in the introductory sentence of this section for clarity.

40 CFR, Section 265.201: This section of 40 CFR sets forth special requirements for generators who generate between 100 and 1000 kilograms of hazardous waste per month and who store that waste in tanks for less than 180 days. These requirements are less stringent than the requirements imposed on generators of 1000 kilograms or more per month (refer to Section 66262.34). This section is not being included in the proposed state regulations, because the Health and Safety Code (H&SC) and existing Title 22, CCR regulations require 100-1000 kilogram generators to comply with the same requirements as generators of 1000 kilograms or more per month.

ARTICLE 11: SURFACE IMPOUNDMENTS

This article is based on 40 CFR Part 265 Subpart K and Title 22 CCR sections 67280 to 67318. It sets forth the requirements for the design, operation, monitoring, inspection, closure and post-closure care of surface impoundments at interim status facilities.

Section 66265.220: This section is based on 40 CFR section 265.220, which sets forth the applicability of these regulations. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.221: This section is based upon 40 CFR section 265.221, which details the design requirements for surface impoundments at interim status facilities. 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:

Section 66265.221 (a): Because of differences between the federal and state regulations, and the types of wastes that they regulate to, several changes have been made to this subsection. The end of this subsection now reads, "...and with respect to RCRA hazardous waste received beginning May 8, 1985, and non-RCRA hazardous waste received beginning January 1, 1989."

The first insertion, "RCRA hazardous", clarifies that after May 8, 1985, RCRA wastes must be disposed of in surface impoundments that are equipped with both double liners and leachate collection systems. Because non-RCRA (California only) wastes were not regulated under the federal rules, the California State Legislature passed the Toxic Pits Cleanup Act (TPCA), which set a date of January 1, 1989, after which, unless exempted, no liquid hazardous waste or hazardous waste containing free liquids can be disposed of in any surface impoundment which is not equipped with double liners, leachate collection system, and groundwater monitoring. The second addition makes this distinction. The TPCA requirements can be found in the California Health and Safety Code sections 25208, et seq.

Section 66265.221 (d)(1): The soluble threshold limit concentration requirement from Title 22, as detailed in sections 66260.10 and 66261.24, has replaced the federal EP toxicity characteristic, for the reasons discussed in the Statement of Reasons for section 66261.24.

Section 66265.222: This section is based on 40 CFR section 265.222, which sets forth the general operating requirements for surface impoundments at interim status facilities. 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:

Section 66265.222 (b): The qualifier, "registered in California", has been added to the requirement for certification from a qualified engineer. This qualifier is found in Title 22 CCR section 67310 (b), and is broader in scope and is not contained in the corresponding federal regulations.

Section 66265.223: This section is based on 40 CFR section 265.223, which covers containment systems for surface impoundments at interim status facilities. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.225: This section is based on 40 CFR section 265.225, which explains waste analysis and trial test requirements. 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:

Section 66265.225 (b): This subsection has been created from the note contained at the end of this section. Its purpose is to inform those regulated as to other related requirements.

Section 66265.226: This section is based on 40 CFR section 265.226, which outlines inspection requirements for surface impoundments at interim status facilities. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.228:: This section is based on 40 CFR section 265.228, which details closure and post-closure care of surface impoundments at interim status facilities. 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:

Section 66265.228 (a)(2)(C)(1): The more stringent Title 22, CCR section 67316 (b)(3)(A) which requires that the final cover be designed to "Minimize the downward entry of water into the closed impoundment throughout a period of at least 100 years.", has replaced less stringent federal language.

Sections 66265.228 (a)(2)(C)(6,7,and 8): Title 22, CCR section 67316 (b)(3) (subsections E, F, and G) have been inserted into the federal requirements. These added subsections relate to vertical and lateral shear forces from earthquakes, rainfall ponding and run-off, and variance requirements that are broader in scope and not contained in the corresponding federal regulations.

In response to a public comment and subsequent analysis by staff, the phrase "maximum probable earthquake", as proposed in the 6/1/89 version of these regulations has been replaced with the existing Title 22 phrase "maximum credible earthquake". It was determined that making the change to "probable" would make the regulations less stringent than existing California requirements.

Section 66265.229: This section is based upon 40 CFR section 265.229, which sets forth special requirements for ignitable or reactive wastes. 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:

Section 66265.229 (b)(2): The more stringent Title 22 requirement that a qualified engineer be "registered in California" has been added.

NOTE and COMMENTS: The effective date note and comments following 40 CFR section 265.229 are not regulatory in nature and have therefore not been included in the text of these regulations.

Section 66265.230: This section is based on 40 CFR section 265.230, which explains the special requirements for incompatible wastes. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

ARTICLE 12: WASTE PILES

This article is based on 40 CFR Part 265 Subpart L and Title 22, CCR sections 67340 to 67351. It sets forth the requirements for the design, operation, monitoring, inspection, closure and post-closure care of waste piles at interim status facilities.

Section 66265.250: This section is based upon 40 CFR section 265.250, which sets forth the applicability of these regulations. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.251: This section is based on 40 CFR section 265.251, which requires that wind dispersal from waste piles must be controlled. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.252: This section is based on 40 CFR section 265.252, which details the requirements for waste analysis of waste piles at interim status facilities. 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:

Section 66265.252 (a) and (b): The original text of this section (which was unlettered) has been lettered as subsection (a). The note which followed the text of the section has been added as subsection (b). This added subsection informs those who are regulated about related requirements contained in these regulations.

Section 66265.253: This section is based upon 40 CFR section 265.253, which sets forth the requirements for leachate and run-off from a waste pile at an interim status facility. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.254: This section is based on 40 CFR section 265.254, which covers the design requirements for waste piles at facilities with interim status. 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:

Two additions have been made to this section in order to bring the design requirements for interim status waste piles in line with the federal regulations and the State Water Resources Control Board's requirements found in Subchapter 15 of Title 23, CCR. The end of this section now reads, "... and with respect to RCRA hazardous waste received beginning May 8,

1985, and non-RCRA hazardous waste received after the effective date of these regulations."

The first insertion, "RCRA hazardous", clarifies that after May 8, 1985, RCRA wastes must be disposed of in waste piles equipped with liners and leachate collection systems which meet the requirements of section 66264.251. The second addition will apply these requirements to waste piles which handle non-RCRA (California only) wastes after these regulations become effective.

Section 66265.256: This section is based on 40 CFR section 265.256, which details the special requirements for ignitable or reactive wastes. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.257: This section is based on 40 CFR section 265.257, which sets forth the special requirements for the storage of incompatible wastes in waste piles at interim status facilities. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

NOTE and COMMENT: The note following 40 CFR section 265.257 however, has not been included in the text of these regulations, since it is not regulatory in nature.

Section 66265.258: This section is based on 40 CFR section 265.258, which covers closure and post-closure care requirements for waste piles at interim status facilities. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

ARTICLE 13: LAND TREATMENT UNITS

This article is based on 40 CFR Part 265 Subpart M and Title 22 CCR sections 67360 through 67382. It sets forth the requirements for the design, operation, treatment demonstration and program, closure and post-closure care of land treatment units at interim status facilities.

NOTE: The phrase, "hazardous constituents" has been changed throughout this article to "constituents of concern". This is so that these regulations can be consistent with those of the State Water Resources Control Board, whose regulations cover non-hazardous as well as hazardous constituents of concern. The term "unsaturated zone" has been replaced throughout this article with the term "vadose zone". This change has been made in order to be consistent with the statutory language from the Health and Safety Code which has been added in many subsections. The two terms have been defined in Section 66260.10 as being synonymous.

Section 66265.270: This section is based on 40 CFR section 265.270, which sets forth the applicability of these regulations. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.272: This section is based on 40 CFR section 265.272, which sets forth the general operating requirements for land treatment units at interim status facilities. 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:

This section incorporates statutory requirements contained in AB 3383, Chapter 1632, Statutes of 1988, which amend various Health and Safety Code sections found between sections 25110 and 25503.7. These requirements are being included in order to eliminate some of the regulated community's confusion which currently arises because requirements central to the hazardous waste control laws are divided between statute and regulation. The Department believes that by consolidating the requirements 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 requirements and, thus, make it easier to comply with the hazardous waste control laws.

Section 66265.272 (c): The phrase, "and disposing of", has been added to reinforce the requirements of those regulations pertaining to classification and disposal of wastes.

In response to a public comment and subsequent analysis by staff, "testing" has been eliminated from the additional language originally proposed in the 6/1/89 version of the

draft regulations. While it is implicit that in order to properly dispose of any contained run-off, testing must be conducted, to specify so in these regulations is beyond the scope of this rulemaking.

Section 66265.272 (f): This new subsection is comprised of language from the California Health and Safety Code section 25209.2. The new subsection specifies that unless a variance is granted, two or more liners and a leachate collection system are required to be installed at every new land treatment unit, every replacement unit, and every and every lateral expansion of an existing land treatment unit.

The Department may grant a variance if the owner/operator can demonstrate that "no hazardous constituents identified in Appendix VIII to Chapter 11 have migrated into the vadose zone or into the waters of the state, and no other hazardous constituents have migrated from the land treatment unit into the vadose zone or into the waters of the State in concentrations which pollute or threaten to pollute the vadose zone or the waters of the State."

In response to a comment submitted by the EPA regarding the effects on potential corrective actions by allowing "migration of hazardous constituents that pollute or threaten to pollute...", several changes have been made to the language originally proposed in the 6/1/89 version of these regulations. The authority to require corrective actions under RCRA extend only to those chemicals identified in Appendix VIII of Chapter 11. The EPA's comment was accommodated by specifying that for hazardous constituents identified in Appendix VIII, no releases would be allowed. The original language contained in the Health and Safety Code, as it relates to those chemicals which California regulates in addition to the Appendix VIII, has been retained.

The new subsection also requires that the design and operating practices prevent the migration of hazardous constituents into the vadose zone and provide for the rapid detection and removal or remediation of any hazardous constituents that migrate from the treatment zone of a land treatment unit. The subsection also specifies that a variance or a renewal of a variance may not exceed three years. These regulations are broader in scope, more stringent, and are not part of, the federal regulations.

Section 66265.272 (g): This new subsection states that unless granted a variance: "after January 1, 1990, no person shall discharge hazardous waste into a land treatment unit which has not been equipped with liners and a leachate collection and removal system...". These requirements are found in the Health and Safety Code section 25209.3, are broader in scope and are more stringent than the federal requirements.

Section 66265.272 (h): This subsection is comprised of statutory language from Health and Safety Code section 25209.6. It provides that under certain conditions, non-RCRA hazardous waste which has been excavated as part on a removal or remedial action at a release site is exempt from the requirements of subsection (f). These requirements are broader in scope, and are not contained in the federal language.

Section 66265.272 (i): This new subsection specifies where the terms "removal", "remedial action", "hazardous substance", and "release" are defined in the Health and Safety Code.

Section 66265.273: This section is based on 40 CFR section 265.273, which sets forth the waste analysis requirements for land treatment units at interim status facilities. 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 section 265.273 (c): 40 CFR section 265.273 (c) has been deleted in its entirety because the growth of food chain crops at interim status land treatment facilities will be prohibited. (See explanation for section 66265.276).

66265.273 (new subsection c): This new subsection has been created from the comment in the federal regulations. It informs owner/operators of other regulatory requirements relating to the documentation of the waste analysis plan in the facility operating record.

Section 66265.276: This section is based on 40 CFR section 265.276, which sets forth the requirements for the growth of food chain crops on land treatment units at interim status facilities. 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:

Section 66265.276: The entire 40 CFR section 265.276 has been deleted and replaced with a new subsection (a) which reads, "The growth of food chain crops in or on the treatment zone is prohibited." This change is necessary to conform to the Title 22 regulations which prohibit food chain crops from being grown at permitted land treatment facilities. This conforming change is necessary to protect the people of the State of California from potential exposure to hazardous wastes through the food chain. This requirement is more stringent than the federal requirements in 40 CFR section 265.276.

Section 66265.278: This section is based on 40 CFR section 265.278, which sets forth the unsaturated zone monitoring requirements for land treatment units at interim status facilities.

This section conforms to the corresponding federal regulation, except for the generic changes specified in the introduction to this Statement of Reasons and as follows:

Section 66265.278 (f): This subsection was created from the comment which came at the end of the federal regulation. It points out that all data developed by the owner or operator has to be placed in the facility's operating record.

Section 66265.278 (g): New language from Health and Safety Code section 25209.4 has been added to make up this new subsection. It directs that no person shall place or dispose of hazardous waste in a land treatment unit if: hazardous constituents have migrated into the vadose zone, there is evidence that a hazardous constituent in the land treatment unit has not or will not be completely degraded, transformed or immobilized, or there is a significant potential for hazardous constituents to migrate from the land treatment unit into a potential source of drinking water. This language is broader in scope, and is not contained in the corresponding federal regulations.

Section 66265.278 (h): This subsection requires that the owner/operator of a land treatment unit shall at least annually submit information to the Department to assure that the conditions set forth in subsection (g) are not present. This language is contained in Health and Safety Code section 25209.4 (a), which is broader in scope and is not found in the federal regulations.

Section 66265.278 (i): This subsection requires that the owner/operator of a land treatment unit that is unable to meet the requirements of subsection (g), shall describe to the Department the results of their findings within 72 hours. This language comes from Health and Safety Code section 25209.4 subsections (b) and (c), is broader in scope, and is not found in the federal regulations.

The requirement that written notification be submitted within 7 days, as originally proposed in the 6/1/89 version of these regulations, has been deleted in response to a public comment.

Section 66265.278 (j): This subsection directs that upon receiving notice pursuant to subsection (i), the owner/operator shall cease operating, and shall close the land treatment unit unless appropriate removal or remedial actions are completed and an application for a permit or variance modification is approved by the Department. The owner/operator may also equip the land treatment unit with liners, and a leachate collection and removal system that satisfy the requirements of this article. This language comes from Health and Safety Code section 25209.4, and is not found in the federal regulations.

Section 66265.278 (k): This subsection requires that unless granted an extension by the Department, all actions taken pursuant to subsection (j) of this section shall be completed within 18 months, or the land treatment unit shall be closed. This requirement comes from Health and Safety Code section 25209.4, and is not contained in the federal regulations.

Section 66265.279: This section is based on 40 CFR section 265.279, which covers recordkeeping for land treatment units at interim status facilities. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.280: This section is based on 40 CFR section 265.280, which sets forth the closure and post-closure care requirements for land treatment units at interim status facilities. 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:

Section 66265.280 (a)(1,2,3): The more stringent requirement of Title 22 CCR section 67378 (a), that migration and release of hazardous wastes, contaminated run-off, and release of airborne particulates be prevented, not just controlled, has been added. These more stringent requirements are not found in the corresponding federal text.

Section 66265.280 (e): The Title 22 requirement that an independent California Certified Engineering Geologist may certify a closure plan has been added. This language is broader in scope and is not contained in the corresponding federal text.

Section 66265.280 (f): 40 CFR section 265.280 (f)(3) has been deleted in order to be consistent with the prohibition on the growth of food chain crops on a land treatment unit. This prohibition is more stringent, and is not found in the federal language.

Section 66265.281: This section is based on 40 CFR section 265.281, which sets forth the special requirements for ignitable or reactive wastes at interim status land treatment units. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.282: This section is based on 40 CFR section 265.282, which sets forth the special requirements for the handling of incompatible wastes at land treatment units with interim status. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

ARTICLE 14: LANDFILLS

This article is based upon 40 CFR Part 265 Subpart N and Title 22 CCR sections 67400 through 67424. It sets forth the requirements for the design, operation, monitoring, inspection, closure and post-closure care of landfills at interim status facilities.

Section 66265.300: This section is based on 40 CFR section 265.300, which sets forth the applicability of these regulations. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.301: This section is based on 40 CFR section 265.301, which sets forth design requirements for landfills at facilities with interim status. 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:

Section 66265.301 (a): Two additions have been made at the end of this subsection. The end now reads, "...and with respect to RCRA hazardous waste received beginning May 8, 1985 and with respect to non-RCRA hazardous waste received after the effective date of these regulations."

The first insertion, "RCRA hazardous", clarifies that after May 8, 1985, RCRA wastes must be disposed of in landfill units that are equipped with both double liners and leachate collection systems. The second addition is necessary to conform landfill units, which handle non-RCRA wastes only, to the standards required by both the federal government, and the State Water Resources Control Board under Subchapter 15 of Title 23, California Code of Regulations.

Section 66265.301 (d)(1): The Title 22 soluble threshold limit concentration, as detailed in sections 66260.10 and 66261.24, has been substituted for the federal EP toxicity criteria, for the reasons set forth in the Statement of Reasons for section 66261.24.

Section 66265.301 (d)(2)(A)(3): In response to a public comment, the phrase "hazardous waste facility" has been added to clarify the types of permits with which a monofill must be in compliance with.

Section 66265.302: This section is based on 40 CFR section 265.302, which details the general operating requirements for landfills at interim status facilities. This section conforms with the corresponding federal regulation, except for the generic changes specified in the introduction to this Statement of Reasons as follows:

Section 66265.302 (e): This new subsection is created from the comment at the end of the federal regulation, and informs facilities of other related requirements they must comply with.

Section 66265.309: This section is based upon 40 CFR section 265.309, which pertains to surveying and recordkeeping requirements. 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:

Section 66265.309 (a): Language from Title 22, CCR section 67419 (a) has been added to the subsection. The added language deals with benchmarks having both horizontal and vertical controls. Horizontal controls are coordinants of latitude and longitude, or other standard coordinant system. Vertical controls refer to the elevation above mean sea level. These requirements are broader in scope and are not contained in the corresponding federal regulations.

Section 66265.310: This section is based on 40 CFR section 265.310, which sets forth the requirements for closure and post-closure care for landfills at facilities with interim status. 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:

Section 66265.310 (a)(1): Text from Title 22, CCR section 67418 (a)(1) requiring the prevention of downward entry of water into a closed unit for at least 100 years, has been substituted for the less stringent 40 CFR requirement.

NOTE: The reference made in the original Statement of Reasons to Title 22, CCR section 67288 (b)(3)(A), was in error. The correct reference has been inserted.

Section 66265.310 (a)(6,7,8): Title 22, CCR sections 67418 (a)(5, 6, and 7) have been added to this subsection. The added language deals with shear forces generated by earthquakes, surface run-on and run-off and ponding of rainfall, and variance requirements, which are broader in scope and are not contained in the corresponding federal regulations.

In response to a public comment and additional staff review, "maximum probable earthquake", as proposed in the 6/1/89 version of these draft regulations, has been replaced with the original Title 22 language of "maximum credible earthquake".

Section 66265.310 (c) through (f): Title 22, CCR sections 67418 (b) through (e) have been added, in full, to make up these new subsections. These added subsections contain additional closure and post closure care requirements that are

broader in scope, more stringent, and are not contained in the corresponding federal regulations.

NOTE: Language from Title 22 which was added as 66265.310 (d) has been deleted because it was duplicative of language contained in subsection (b). However, language which was added as subsection (d)(1) has been inserted as Section 66265.310 (b)(1) in order to make the requirements of this section equal to those contained in Title 22, CCR section 67418.

Section 66265.312: This section is based on 40 CFR section 265.312, which sets forth the special requirements for ignitable or reactive wastes in landfills at interim status facilities. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.313: This section is based on 40 CFR section 265.313, which details the special requirements for incompatible wastes in landfills at interim status facilities. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.314: This section is based on 40 CFR section 265.314, which sets forth the special requirements for bulk and containerized liquids which are disposed of in landfills at interim status facilities. 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:

Section 66265.314 (a): This subsection of 40 CFR has been deleted because the effective date of November 8, 1985 has already past. 40 CFR section 265.314 (b) has been retained and modified with the effective date of the California disposal requirement, which was February 2, 1985 (Register 85, No.2).

In response to a public comments and clarification from EPA, the prefix "non", which was deleted from the term "non-containerized liquid hazardous waste" in the 6/1/89 version of these draft regulations, has been reinserted. Language from 40 CFR section 265.314 (c)(1), which was inadvertently left out has been put back in as section 66265.314 (b)(1). The added language deals with the removal or absorption of free liquids from containers.

Section 66265.314 (c): Language has been added which directs that Method 9095 (SW-846) be used, "except that the representative sample size shall be 100 milliliters and a 400 micron standard conical filter shall be used in lieu of the 60 mesh filter described in Method 9095." These changes are necessary to make the new regulations consistent with the free

liquids test currently described in Title 22, CCR section 66076, which is more stringent than the corresponding federal regulations.

Section 66265.314 (d): The text from 40 CFR section 265.314 (f), which was deleted in the original proposal of 6/1/89, has been reinserted due to a comment from EPA.

40 CFR section 265.314 (e): This subsection has been deleted because the federal effective date is not applicable to these regulations.

Section 66265.315: This section is based on 40 CFR section 265.315, which details the special requirements for containers which are disposed of in landfills at facilities which have interim status. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons.

Section 66265.316: This section is based on 40 CFR section 265.316, which pertains to the disposal of small containers of hazardous waste in overpack drums (lab packs). 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:

Section 66265.316 (e): Text from Title 22, CCR section 67424 (e) has been added to this subsection. The more stringent text reads, "...provided that the cyanide concentration is less than 1,000 mg/l.", and is not contained in the corresponding federal regulations.

Section 66265.317: This section has been added in response to a new regulation added to Title 22 in October, 1989, as section 67425. This new section sets forth a requirement that effective October 12, 1991, all nonliquid hazardous waste, bulk or containerized, must contain less than 50 percent moisture by weight prior to disposal in a hazardous waste landfill. This new section also sets forth the method for determining the moisture content of a waste sample. This requirement has no corresponding requirement in 40 CFR, and is therefore more stringent.

ARTICLE 15: INCINERATORS

This article sets forth requirements for incinerators operating under interim status. It includes waste analysis and monitoring requirements, performance standards, and requirements for trial burns. It also addresses operating and recordkeeping requirements, notification requirements for burning certain specific hazardous wastes and sets forth closure requirements for incinerators.

Section 66265.340: This section is based on 40 CFR section 265.340; it establishes the applicability of this article. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

In Subsection (a)(2), the phrase "...for any recycling purpose and elect to be regulated under this subpart" is being deleted. Current State law regulates any burning of hazardous waste whether in incinerators or industrial furnaces or boilers under the incinerator regulations of existing Title 22 Article 30. Thus, persons burning hazardous waste for recycling purposes are regulated as incinerators and do not have the option of choosing to be regulated. Additional changes were made to this subsection for the second comment period. The words "...in order to destroy them..." were deleted to conform to Health and Safety Code section 25143.2 which states that any material burned for energy recovery cannot be exempt from classification as hazardous waste. Thus, persons burning these materials are regulated as incinerators and the deleted words are unnecessary. Also, repetitive words were removed from the end of this sentence.

Section 66265.341: This section is based on 40 CFR section 265.341; it establishes requirements for analysis of waste being burned in incinerators operating under interim status. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66265.345: This section is based on 40 CFR section 265.345; it establishes operating requirements and parameters to be included in the stated operating requirements along with some required operational safety equipment. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66265.347: This section is based on 40 CFR section 265.347; it establishes which parameters must be monitored, sets a schedule for monitoring and inspection of the incinerator, and establishes recordkeeping requirements. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66265.351: This section is based on 40 CFR section 265.351; it establishes additional requirements for closure of hazardous waste incinerators operating under interim status. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

The comment at the end of this section is being included in this regulation. This comment states that at closure, and throughout the operating period, unless the owner or operator can demonstrate that the residue removed from the incinerator is not hazardous, he becomes a generator of hazardous waste and must manage the waste accordingly. This language is regulatory in nature and must be included in the body of the regulation.

Section 66265.352: This section is based on 40 CFR section 265.352; it establishes special requirements for interim status incinerators burning specific hazardous wastes (dioxins and furans). This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

ARTICLE 16: OTHER THERMAL TREATMENT

This article contains requirements for interim status facilities using thermal treatment devices other than incinerators to destroy hazardous waste. It contains waste analysis and monitoring and inspection requirements, closure standards, special requirements for burning of waste explosives, and special standards for interim status incinerators burning specific hazardous wastes (dioxins and furans).

Section 66265.370: This section is based on 40 CFR section 265.370; it establishes the applicability of this article. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66265.373: This section is based on 40 CFR section 265.373; it establishes General operating requirements for interim status facilities using thermal treatment other than incinerators. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66265.375: This section is based on 40 CFR section 265.375; it establishes waste analysis requirements for interim status facilities using thermal treatment other than incinerators. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

The comment at the end of this section is being included in this regulation as subsection (b). This comment states that the results of the waste analysis, or specified documented information, required in the preceding subsections be entered into the operating record of the facility. Because this is a requirement which must be complied with, this comment is regulatory in nature and must be included in the body of this regulation.

Section 66265.377: This section is based on 40 CFR section 265.377; it establishes requirements for monitoring and inspections at interim status facilities using thermal treatment other than incinerators. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66265.381: This section is based on 40 CFR section 265.381; it establishes closure requirements for interim status facilities using thermal treatment other than incinerators. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66265.382: This section is based on 40 CFR section 265.382; it establishes rules for open burning of waste explosives at interim status facilities. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66265.383: This section is based on 40 CFR section 265.383; it establishes special requirements for interim status facilities burning specified dioxin containing hazardous wastes in devices other than incinerators. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

ARTICLE 17: CHEMICAL, PHYSICAL, AND BIOLOGICAL TREATMENT

This article is based on Subpart Q of 40 Code of Federal Regulations (CFR), Part 265. It sets forth the requirements for owners and operators of interim status facilities which treat hazardous wastes by chemical, physical, or biological methods.

Section 66265.400: This section, which is based on 40 CFR, Section 265.400, specifies the applicability of this article. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons (SOR).

Section 66265.401: This section, which is based on 40 CFR, Section 265.401, specifies general operating requirements for the facility. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

Section 66265.401(c): The comment at the end of the corresponding federal regulation is not being included in the proposed regulation because it is not regulatory in nature and is not necessary to these regulations.

Section 66265.402: This section, which is based on 40 CFR, Section 265.402, provides some additional requirements for the waste analysis and trial tests. This section conforms to the corresponding federal regulations except for the generic changes specified in the introduction to this SOR and as follows:

Sections 66265.402(a) and (b): Subsection (a) of 40 CFR, Section 265.402 is being split into two subsections ((a) and (b)) and some nonsubstantive wording changes are being made to improve the organizational structure and the clarity of this regulation. The meaning of this regulation is not being altered by these changes.

The comment at the end of the corresponding federal regulation is not being included in the proposed regulation because it is only used to reference and repeat requirements contained elsewhere in these regulations, and is not necessary to this regulation section.

Section 66265.403: This section is based on 40 CFR, Section 265.403 and specifies inspection requirements for interim status facilities conducting chemical, physical, and biological treatment. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

The comment at the end of the corresponding federal regulation is not being included in the proposed regulation because it is only used to reference and repeat requirements contained elsewhere in these regulations, and is not necessary to this regulation section.

Section 66265.404: This section is based on 40 CFR, Section 265.404 and specifies closure requirements for interim status facilities conducting chemical, physical, and biological treatment. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

This section is being revised to require owners and operators of incinerators (conducting chemical, physical, or biological treatment) to comply with the requirements of proposed Section 66265.351. This change is necessary to conform to existing Title 22 (Section 67524) which, unlike 40 CFR, does not apply the closure requirements for chemical, physical, and biological treatment units to incinerators. Instead, existing Title 22 requires all incinerators (including those conducting chemical, physical, or biological treatment) to comply with the incinerator closure requirements specified in proposed Section 66265.351 (and in existing Title 22, CCR, Section 67468), which are more stringent than the closure requirements for chemical, physical, and biological treatment units. (Section 66265.404 requires removal of hazardous waste and hazardous waste residues only from the treatment processes, equipment and structures. Section 66265.351, however, requires removal from the incinerator site.)

Section 66265.405: This section, which is based on 40 CFR, Section 265.405, specifies special requirements for managing ignitable or reactive wastes. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66265.406: This section is based on 40 CFR, Section 265.406 and specifies special requirements for managing incompatible wastes. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

ARTICLE 18: ENVIRONMENTAL MONITORING OF AIR AND SOIL-PORE GAS FOR INTERIM STATUS FACILITIES

This article is based on Title 22 CCR Article 22. It sets forth the environmental monitoring and corrective action requirements for Interim status facilities.

As part of the effort to obtain RCRA authorization for the State of California, the Department of Health Services and the State Water Quality Control Board entered into an agreement to rewrite the monitoring requirements for hazardous waste facilities. The primary objective of the work group was to design parallel sets of monitoring regulations which can be adopted by both agencies in order to provide consistent requirements for the regulated community. All water quality monitoring requirements for interim status facilities from existing regulations (RCRA, Title 22, and Title 23) have been incorporated into Article 6 of Chapter 15. In addition to the water quality monitoring requirements, original Title 22 requires the owner or operator to monitor air and soil-pore gas. Since the Water Quality Control Board does not have comparable requirements, these provisions have been moved into a separate article from the water quality monitoring requirements.

Since Title 22 CCR Article 22 was used as the base document for this environmental monitoring article, all requirements for monitoring ground water, surface water, and the unsaturated zone are shown as struck out text. The Title 22 checklist should be used to find the comparable requirements in Article 6.

Several changes have been made in order to standardize the terminology used here and in Article 6:

References to "units" and "facilities" have been standardized. "Unit" or "regulated unit" is used when a provision applies to an individual, regulated unit. "Facility" is used as defined in the definitions section.

References to "human health and the environment" have been modified to read "human health or the environment" for the sake of consistency. (Existing regulations use both, apparently interchangeably.)

Section 66265.710 : This section is based on Title 22 CCR Article 22 section 67191. It establishes the applicability of the regulations contained in this article. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

The term "regulated unit" has been introduced for the sake of consistency with Article 6. Like the requirements of Article 17 of Chapter 14, the requirements of this article only apply

to regulated units which have received hazardous waste after the original effective date of the Title 22 regulations, February 2, 1985.

Section 66265.711 : This section is based on Title 22 CCR Article 22 section 67192. It establishes environmental monitoring system requirements for interim status facilities. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

This section replaces section 66265.711 (c). It has been rewritten to replace the references to environmental systems requirements for permitted facilities with the requirements themselves. The original text from Title 22 CCR Article 22 section 67188 (t) was used as the base document for this subsection.

In order to make these proposed regulations self-implementing most references to Departmental approval or to criteria specified by the Department have been deleted, and where necessary, replaced with guidance for the owner or operator. (e.g. "If specified by the Department" has been replaced with "If necessary to protect human health and the environment".)

Section 66265.712 : This section is based on Title 22 CCR Article 22 section 67193. It establishes environmental sampling and analysis requirements for interim status facilities. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

Section 66265.712 (a) : Language has been added to require the owner or operator to prepare a sampling and analysis plan and to maintain this document at the facility. This document, the environmental sampling and analysis plan, is to be used in place of the facility permit during interim status. This is consistent with the requirement in Article 6 of Chapter 15.

Section 66265.712 (b) : This section replaces section 66265.712 (f). It has been rewritten to replace the references to environmental sampling and analysis requirements for permitted facilities with the requirements themselves. The original text from Title 22 CCR Article 22 section 67188 (u) was used as the base document for this subsection.

The requirement to monitor for those substance specified in the facility permit has been changed because, during interim status, there is no facility permit. The list of monitoring

parameters must be specified in the environmental sampling and analysis plan.

In order to make the regulations for interim status facilities self implementing, the reference to parameters specified by the Department in the facility permit has been modified. The new language allows an owner or operator to propose a list of parameters to the Department for approval.

The phrase "and soil-pore gas" has been added to the fourth sentence because it had apparently been omitted in error.

Section 66265.713 : This section is based on Title 22 CCR Article 22 section 67194. It establishes comprehensive environmental monitoring and response requirements for interim status facilities. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

In several sections the phrase "soil-pore gas" has been added to clarify that the response requirements for releases from a regulated unit apply to soil-pore gas as well as to air. The original regulation was inconsistent in its treatment of the two media.

Section 66265.713 (a) : This section has been modified to more clearly require the owner or operator to, within one year of the effective date of the regulations, prepare a comprehensive environmental monitoring program for air and soil-pore gas.

Section 66265.713 (b) : This section has been modified to more clearly require an owner or operator to quickly (within 15 days) respond to indications of a release to air or soil-pore gas from a regulated unit.

Section 66265.714 : This section is based on Title 22 CCR Article 22 section 67195. It establishes the reporting requirements for environmental sampling and analysis at interim status facilities. This section conforms to the corresponding regulation except for the generic changes specified in the introduction to this statement of reasons and in the article overview and as follows :

This section was rewritten to establish annual reporting requirements for environmental monitoring data. This is consistent with the reporting requirements in Article 6 of this Chapter.

Appendix I: This is based on 40 CFR Part 265, Appendix I, which establishes additional recordkeeping instructions for portion of the operating record. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to the Statement of Reasons and as follows:

Section (1): New language is being added that requires the California Hazardous Waste Code number be used for recordkeeping and reporting requirements. This requirement is not in federal regulation. Although these code numbers are not currently in Title 22, they are on the back of the manifest and they are being incorporated in these regulations in Chapter 11, Appendix XII.

APPENDICES II, III and IV: Reserved.

40 CFR PART 265, APPENDIX III: This appendix in the federal regulations sets forth EPA interim primary drinking water standards. These standards are referenced in Subpart F of 40 CFR Part 265 for use in determining ground water monitoring parameters for interim status facilities. Proposed Chapter 15, Article 6 (the counterpart to Part 265, Subpart F) sets forth other procedures and criteria (which have been approved by the USEPA) for establishing monitoring parameters, and does not make use of these drinking water standards. Therefore, this federal appendix is not being included in the proposed state regulations. (Refer to the Statement of Reasons for Chapter 15, Article 6 for more information.)

40 CFR PART 265, APPENDIX IV: This appendix in the federal regulations, which is referenced by 40 CFR Part 265, Subpart F, discusses the statistical procedures for determining significant changes in indicator parameters used in the analysis of ground water monitoring data. Specifically, this appendix and Subpart F require the use of the Student's t-test. The October 11, 1988 Federal Register modified the ground water monitoring regulations for permitted facilities, including discontinuing use of the Student's t-test in favor of more appropriate statistical procedures. The Federal Register states that EPA did not make corresponding modifications to the interim status regulations because most interim status facilities required to comply with the federal ground water monitoring regulations were expected to be permitted by November 1988. However, there are still enough interim status facilities required to comply with the state water quality monitoring regulations to warrant modifying the Chapter 15, Article 6 regulations (the counterpart to Part 265, Subpart F) to conform to the modified/improved water quality monitoring regulations for permitted facilities. Therefore, the proposed state interim status regulations are being modified to substitute more appropriate statistical procedures for the Student's t-test.

For this reason, this federal appendix is not being included in the proposed state regulations. (Refer to the Statement of Reasons for Chapter 15, Article 6 for more information.)

APPENDIX V: This appendix is based on Appendix V of 40 CFR Part 265 and sets forth examples of potentially incompatible waste. This appendix conforms to the corresponding federal appendix except for the generic changes specified in the introduction to this Statement of Reasons.

SUBPART R: Underground Injection

Subpart R of 40 CFR Part 265 sets forth requirements for owners and operators of interim status underground injection wells. Health and Safety Code section 25159.15 prohibits the operation of a hazardous waste injection well in California without a hazardous waste facility permit. Thus, underground injection wells are not allowed to operate under interim status under California law. Therefore, the provisions of Subpart R are not applicable in California and are not being incorporated into the proposed state regulations.