

CHAPTER 18: LAND DISPOSAL RESTRICTIONS AND TREATMENT STANDARDS:

CHAPTER OVERVIEW: Chapter 18 establishes restrictions on land disposal of untreated hazardous waste, standards for treatment of that hazardous waste prior to land disposal, and procedures for obtaining variances from these requirements.

The original version of Chapter 18 was presented for a 45-day public review which ended in the August 9, 1989 public hearing. Chapter 18 regulations cover all federal regulations under 40 CFR Part 268 existing as of August 17, 1988. These federal regulations were modified to meet the more stringent requirements of the parallel State program and the Hazardous Waste Management Act of 1986 (HWMA), and to include the generic changes described in the introduction to the Statement of Reasons.

After the hearing, Chapter 18 was amended to address the public comments and to add the changes to 40 CFR published in the Federal Registers on: a) May 2, 1989 - Corrections to First Third restrictions; b) June 23, 1989 - Second Third of the RCRA listed wastes; and c) September 6, 1989 -- Additional corrections to the First Third restrictions. In addition, Chapter 18 now includes recently adopted State regulations which: a) established the State land disposal restriction framework and specify treatment standards for solvents and dioxin and b) set a new effective date of July 8, 1992, for restricting solid wastes containing halogenated organics from land disposal. The first post-hearing revisions to Chapter 18 were made available for public review and comment for a 45-day period which ended February 15, 1990.

Chapter 18 was further revised to address the comments on the post hearing changes and to add recently adopted State regulations which: a) establish prohibitions and treatment standards for non-RCRA aqueous wastes with metals and PCB wastes and b) establish incineration criteria for volatile organic compounds (VOC). The second post-hearing revisions were noticed until May 20, 1990.

Further revisions were made to address the comments from the 15-day notice and to add newly adopted State regulations which establish prohibitions and treatment standards for non-RCRA solid waste with metals, solid waste with organics, and aqueous and liquid organic waste.

After the regulation package submitted to OAL on June 22, 1990 and in response to OAL's comments, Chapter 18 was further modified by adding the latest changes to 40 CFR published in the Federal Registers of: a) June 1, 1990 - Land Disposal Restrictions for the Third Third Scheduled Wastes (55 FR 22686); b) March 29, 1990 - Toxicity characteristics revisions (55 FR 11682) and c) June 29, 1990 - corrections to the Toxicity characteristics revisions (55 FR 26986).

Following the post-OAL comment period, further nonsubstantive changes were made to Chapter 18 adding newly adopted State regulations which establish prohibitions and treatment standards for non-RCRA solvent waste, foundry sands, auto shredder waste, fly ash, bottom ash, retort ash, and baghouse waste.

Because of numerous changes to the original text of 40 CFR Part 68, the Statement of Reasons is arranged as follows: it begins with the changes to 40 CFR existing as of August 17, 1988; then it describes the first post-hearing revisions followed by the second post-hearing revisions, post 15-day notice revisions, and the revisions made in response to OAL's comments on the package.

ARTICLE 1. ARTICLE OVERVIEW:

Article 1 establishes the scope and applicability of the regulations in Chapter 18, establishes a ban on storage of untreated hazardous waste in lieu of treatment, establishes criteria and procedures for granting variance from the regulations in Chapter 18, and establishes restrictions on disposal of untreated hazardous wastes in land disposal units or in surface impoundments.

Section 66268.1: This section establishes the scope and applicability for the regulations in Chapter 18; it is based on 40 CFR Section 268.1. 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:

Subsection (c)(2) to 40 CFR Section 268.1 is being deleted. This subsection describes the "No Migration Petition" found in 40 CFR Section 268.6. Because 40 CFR Section 268.6 is not being adopted, this subsection is not necessary to describe it.

Subsection (c)(3) to 40 CFR Section 268.1 is being deleted. This subsection exempts waste produced by conditionally exempt small quantity generators as defined in 40 CFR Section 261.5 from the provisions of this chapter. 40 CFR Section 261.5 is not being adopted in the proposed regulations; therefore, this reference is meaningless and is not being included. Further, the enabling statute for California's land disposal restriction and treatment standards program, H&SC Section 25179 et seq, contains no exemption for small quantity generators. Incorporation of subsection (c)(3) would cause State law to be less stringent.

The first post-hearing notice (closed February 15, 1990) covers the following changes to the originally noticed Section 66268.1:

The introductory text to subsection (c) was revised; subsection (c)(2) was deleted; and subsection (e) was added in

order to conform to the correction notice published in the September 6, 1989 Federal Register.

New subsections (c)(4), (c)(5), and (c)(6) were added to incorporate the language of the recently adopted Section 67700, Title 22, CCR.

Subsection (c)(2) is revised to delete a reference to Article 7.7 of Chapter 6.5 of the H&SC. The Department finds that the added reference to the State law is unnecessary and could be misleading.

Subsection (e)(2) was added to include non-RCRA soil exemption provision in Section 25179.6(a)(2), H&SC. Also, subsection (f) was added to conform with general land disposal prohibition requirements in Section 25179.6, H&SC.

A number of non-substantive changes were made to correct grammatical and typographical errors.

Further revisions were made to add newly adopted state regulations Section 67706, Title 22, CCR, as subsections (g) and (h).

In response to OAL's comments on the package, additional revisions were made:

In subsections (c)(5) and (d), parallel citations to the U.S.C. were added in response to OAL's comments.

Subsections (c)(2) was deleted to conform with the new change in 40 CFR 268: 55 FR 22686 dated June 1, 1990. Subsection 40 CFR 268.1(c)(3) was not adopted, because the HWMA does not provide any exemption for injection wells.

Subsection (f) was added to clarify the language in the HWMA, that all hazardous wastes are subject to land disposal restrictions effective May 8, 1990. Subsections (g), (h) and (i) were renumbered accordingly.

Subsection (i) was revised to require "newly listed" federal waste (not listed in Sections 66268.10, 66268.11 and 66268.12) to comply with EPA's newly developed treatment standard in 40 CFR 268, or existing treatment standards in the absence of an EPA standard.

Section 66268.2: Federal definitions in 40 CFR Section 268.2 were incorporated into proposed Section 66260.10 with all other definitions central to the hazardous waste control law. This collection of definitions is being done to clarify the regulations. A reference is made to Section 66260.10 to provide a comparison with 40 CFR 268.2.

Section 66268.3: This section prohibits using dilution of hazardous wastes as a substitute for treatment; it is based on 40 CFR Section 268.3.

The first post-hearing change on Section 66268.3 deleted the phrase "Article 7.7 of Chapter 6.5 of the Health and Safety Code". The Department finds that the added reference to the State law is unnecessary and could be misleading.

EPA's final rule on the Third Third Scheduled Waste (55 FR 22686 dated June 1, 1990) added subsection (b), allowing dilution of the characteristic metal-containing aqueous waste that is discharged pursuant to a pretreatment permit issued under the Clean Water Act. The Department did not adopt this subsection (b) because:

EPA's rationale for allowing dilution at the pretreatment units was to allow continued use of unlined ("subtitle D") surface impoundments as part of the treatment train (55 FR 22657 dated June 1, 1990) because diluting hazardous waste and non-hazardous waste (or water) prior to placement (land disposal) in the surface impoundment will trigger dilution prohibition. Pursuant to H&SC Section 25179.11, the use of unlined surface impoundment in California is prohibited. Also, the Department does not see any conflict with the pretreatment program in prohibiting dilution as a substitute for treatment (40 CFR 403.6(d)). In addition, the department is not aware of any pretreatment unit using unlined surface impoundment in California. Removal of heavy metals in a tank system is widely used cost-effective treatment method. Dilution of metal-containing aqueous waste does not remove any hazardous compound and is not protective to the environment. Therefore, the Department believes that it is unnecessary to provide any exemption to "dilution prohibition."

In addition, references to: a) United States Code (U.S.C.) 6924, in response to OAL's comments, b) newly added subsection 66268.1(h) and c) Article 10 and Article 11, which were inadvertently omitted, were made in the text.

40 CFR Section 268.4: 40 CFR Section 268.4 is being deleted; this 40 CFR section established the procedures for exempting a surface impoundment which treats RCRA hazardous wastes from land disposal restriction. This federal section is being deleted because the State requirements for exempting treatment surface impoundments from land disposal restriction, specified in Section 25179.11, California H&SC, are more stringent. Among other things, this State law requires that surface impoundment comply with 40 CFR Section 268.4 before an exemption is granted. Section 25179.11, California H&SC, is referenced in subsection (c)(5) of the proposed Section 66268.1.

Section 66268.5: This section establishes procedures for gaining a case-by-case extension to an effective date for a land disposal prohibition; it is based on 40 CFR Section 268.5. 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), the last sentence is being deleted. This sentence tells the reader that an applicant for a case-by-case extension must make the demonstrations set forth in the following subsections. Because the following subsections were deleted, this sentence is unnecessary and would be confusing.

Subsections (a)(1) through (a)(7), (b), (c), and (d) were deleted. These 40 CFR subsections establish the demonstrations and criteria for the U.S. EPA Administrator to grant extensions to the land disposal restrictions. Because the authority to grant these extensions for federally regulated hazardous waste is reserved for the U.S. EPA Administrator, the State cannot adopt these provisions. Repetition of these provisions in these proposed regulations without the authority to grant the extensions would be unnecessary and confusing to the regulated community.

New subsection (b) is being incorporated. This states that an applicant for an extension to the effective date from land disposal prohibition for a hazardous waste must first demonstrate to the Department that he has received an extension from the U.S. EPA Administrator or that his hazardous waste is not federally regulated. This addition is necessary because the State cannot grant a variance from federal requirements.

New subsection (c) is being added. This subsection establishes the demonstrations that an applicant for a case-by-case extension under must make under State law. The requirements in new subsections (c)(1) through (c)(4) have been taken directly from existing State law, H&SC Section 25179.8(a)(1) through (a)(4). The provision in subsection (c)(5) restates the requirements of H&SC Section 27179.8 (b). These provisions are being repeated in the proposed regulations because of the unclarity which results from having provisions applicable to these case-by-case extensions scattered between State statute and regulation.

In new subsection (d) (40 CFR Section 268.5(e)), the requirement that decisions be noticed, comments accepted, and affected States consulted is being deleted. These provisions apply to the U.S. EPA Administrator's issuance of case-by-case extensions and are not applicable to the State's issuance of case-by-case extensions for non-RCRA hazardous waste.

In new subsection (d) (40 CFR Section 268.5(e)), reference to the "Administrator" is being changed to the "Department" because this section now refers to the Department's authority to grant case-by-case extensions to non-RCRA hazardous wastes.

In new subsection (d) (40 CFR Section 268.5(e)), the reference to the completion schedule required by 40 CFR Section 268.5(a)(5) is being deleted because the Department is deleting that subsection as explained above.

In new subsection (d) (40 CFR Section 268.5(e)), the requirement that the final decision of the Administrator be published in the Federal Register is being deleted. The Department publishes official documents in the State Register rather than the Federal Register.

In new subsection (f) (40 CFR Section 268.5(g)), the phrase "or the Department" is being added (three places). This subsection establishes a requirement for the grantee to report progress in obtaining treatment capacity for his wastes, and requirements for cancellation of an extension. Because the Department issues these extensions for non-RCRA hazardous waste and must grant an extension to RCRA hazardous wastes already granted an EPA extension, both agencies need the progress reports and both agencies must retain the authority to revoke a case-by-case extension that they have issued.

In new subsection (g) (40 CFR Section 268.5(h)), the phrase "or the Department" is being added. This subsection establishes special management standards applied to the disposal of a hazardous waste granted a case-by-case extension. Because the Department issues these extensions for non-RCRA hazardous waste and must grant an extension to RCRA hazardous wastes already granted an EPA extension, both agencies must be referred to here.

The first post-hearing notice (closed February 15, 1990) covers the following changes to the originally noticed Section 66268.5:

Subsections (e), (f), and (h) were revised and subsection (j) was deleted in response to public comments (Comment Nos. A204, A205, A206, and AF91).

Subsections (j) and (k) were added to adopt the language of existing Sections 67732(c) and 67732(e), Title 22, CCR, relating to the setting of time frames for the processing of the application for extension required by the Permit Reform Act of 1981.

A number of non-substantive changes were also made to correct grammatical and typographical errors and to improve clarity.

Some of the changes were in response to public comment.
(Comment Nos. A191 and A203).

In response to OAL's comments, the reference citation to Government Code Sections 15374 through 15378 was changed to only Section 15376.

40 CFR Section 268.6: 40 CFR Section 268.6 is being deleted in the proposed regulations. This 40 CFR section establishes a variance from the land disposal restrictions which can only be issued by the U.S. EPA Administrator. This variance, known as a "no migration petition," cannot be issued by the Department; thus, inclusion of this section is not necessary. The "no migration petition" cannot be granted by the Department because the authority to grant this variance is not delegated by the EPA Administrator to an individual State (see 40 CFR Section 268.6) and because the State law does not provide any authority to grant such variance (see Article 7.7, Chapter 6.5, Division 20, H&SC).

Section 66268.7: This section establishes waste analysis and recordkeeping requirements for persons disposing of land disposal restricted hazardous waste; it is based on 40 CFR Section 268.7. 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 first post-hearing revision to the originally noticed Section 66268.7 are as follows:

Subsections (a), (b), and (c), is revised to delete the phrase "or Article 7.7 of chapter 6.5 of the H&SC" which was added (14 places) after the phrase "or RCRA Section 3004(d)". The Department finds that the added phrase is unnecessary and could be misleading.

Subsections (a)(3), (a)(4), and (b)(8) were revised and subsection (c)(4) was added in response to the correction notice published in the September 6, 1989 Federal Register.

A reference to California waste codes is added after the phrase "EPA Hazardous Waste Number" in subsections (a)(2)(A), (a)(3)(A), (a)(4)(A), and (b)(4)(A) in response to a public comment (Comment No. A206).

A number of non-substantive changes were also made to correct grammatical and typographical errors and to improve clarity. Some of the changes were made in response to public comment. (Comment Nos. A191 and A203).

The second post-hearing revisions to the originally noticed Section 66268.7 are as follows:

Subsections 66268.7(a), 66268.7(a)(5), 66268.7(b)(1), and 66268.7(b)(2) were revised in response to public comment. (Comment No. 19AQ)

The word "Article 11" was added (9 places) after the phrase "treatment standards set forth in Article 4" to give notice of the fact that treatment standards are also set forth in Article 11 of Chapter 18. Article 11 contains treatment standards for non-RCRA wastes which are presently in Article 41, Title 22, CCR.

In response to OAL's comments on the package, the following revisions have been made:

In response to OAL's comments, parallel citations to U.S.C. were added next to RCRA Section 3004(d) references throughout.

EPA's final rule on Third Third Scheduled Waste, Federal Register dated June 1, 1990, 55 FR 22686, made extensive revisions to the corresponding 40 CFR 268.7. Subsections (a)(1)(B), (a)(2)(A)2, (a)(3)(B), (b)(4)(B), (a)(7), (a)(8), (a)(9), (b)(5)(A), and (b)(5)(C), were revised to conform to the 40 CFR 268.7. Also, subsection (b)(7), was deleted accordingly. New language in 40 CFR 268.7(a) (4), which applies to "wastewater treatment in 90-day tank" addressed under 40 CFR 264.1(g)(6), was not adopted, because Section 66264.1 does not allow "90-day tank exemption." This category is fully subject to permit requirement in California, and therefore must comply with subsection 66268.7(b).

To be consistent with the June 1, 1990 Federal Register, subsection (a)(10) was added to Section 66268.7 to allow a similar type of "one-time notification" provision (as subsection (a)(9)) for small-quantity generators of non-RCRA hazardous waste, when the waste is reclaimed according to the milkrun agreement. Without this subsection, the hazardous waste would be subject to a notification requirement for every shipment (subsection (a)(1)).

Subsections (b)(8) and (c)(4), which were related to "the waste used in a manner constituting disposal" provision, were inadvertently left in and have been deleted. 40 CFR Section 268.20 is not being adopted in California (See Article 3, chapter 16 of this Division).

Section 66268.8: EPA's final rule on Third Third Scheduled Waste (55 FR 22688) made a revision to add a sentence in the corresponding 40 CFR 268.8: "As of May 8, 1990, this section is no longer in effect." The Department believes that this section is not needed at this time and therefore deleted the entire section. The following previous statement of reasons is kept here for the record.

This section sets forth restrictions for disposal of hazardous waste in landfills and surface impoundments; it is based on 40 CFR Section 268.8. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this Statement of Reasons.

The first post-hearing revisions to the originally noticed Section 66268.8 are as follows:

Subsections (a)(2), (a)(3), (b)(1), (c)(2), and (d) were revised in response to the correction notice published in the September 6, 1989 Federal Register.

Subsections (a)(3), (a)(4) and (c) were revised in response to public comments (Comment Nos. A207 and A208).

A number of non-substantive changes were also made to correct grammatical and typographical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

The second post-hearing revisions to the originally noticed Section 66268.8 are as follows:

A number of non-substantive changes were made to subsections (a)(2)(A), (a)(2)(A), (a)(2)(A), and (a)(2)(A) to correct typographical errors and to improve clarity, in response to comments (Comment Nos. 19AR, 19AS, 19ART, and 19AU).

Section 66268.9: This section was added to conform to the newly adopted 40 CFR 268.9 (55 FR 22688, dated June 1, 1990). In subsection (b), a paragraph is added to require certain "characteristic RCRA" waste to comply with both: a) federal treatment standard for the characteristic and b) applicable non-RCRA treatment standard for other hazardous constituents (that are not regulated by EPA). As an example, without this paragraph, a corrosive metal-containing waste with non-RCRA metals such as nickel or copper would be allowed to be land disposed after removing only corrosivity by adjusting pH; non-RCRA treatment standard for nickel or copper will address the toxicity of these metals, according to the proposed regulation.

ARTICLE 2: ARTICLE OVERVIEW:

This article sets forth the schedule that the EPA will adhere to in emplacing land disposal restrictions and setting treatment standards for federally listed hazardous wastes.

Section 66268.10: This section sets forth a list of RCRA wastes which are required to be restricted from land disposal and for which EPA is scheduled to establish treatment standards by August 8, 1988; it is based on 40 CFR Section 268.10. 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:

A phrase is being added to the introductory paragraph to remind the reader that RCRA automatically bans these wastes if the EPA fails to set treatment standards by the date specified in RCRA. This note is necessary for clarity because the reader would otherwise have no way to tell that these provisions of RCRA would apply.

The first post-hearing changes revised the introductory paragraph in response to public comments (Comment No.A209).

A number of non-substantive changes were also made to correct grammatical and typographical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

In response to OAL's comments on the package, the following changes were made:

Parallel citations to the U.S.C. were added next to RCRA references.

The section was divided into four subsections.

Section 66268.11: This section sets forth a list of RCRA wastes which are required to be restricted from land disposal and for which EPA is scheduled to establish treatment standards by June 8, 1989; it is based on 40 CFR Section 268.11. 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:

A phrase is being added to the introductory paragraph to remind the reader that RCRA automatically bans these wastes if the EPA fails to set treatment standards by the date specified in RCRA. This note is necessary for clarity because the reader would otherwise have no way to tell that these provisions of RCRA would apply.

The first post-hearing revisions to the proposed Section 66268.11 are as follows:

The introductory paragraph was revised in response to public comment (Comment No. A209).

A number of non-substantive changes were also made to correct grammatical and typographical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

In response to OAL's comments on the package, the following changes were made:

Parallel citations to the U.S.C. were added next to RCRA references.

The section was divided into four subsections.

Section 66268.12: This section sets forth a list of RCRA wastes which are required to be restricted from land disposal and for which EPA is scheduled to establish treatment standards by May 8, 1990; it is based on 40 CFR Section 268.12. 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:

A phrase is being added to subsection (a) to remind the reader that RCRA automatically bans these wastes if the EPA fails to set treatment standards by date specified in RCRA. This note is necessary for clarity because the reader would otherwise have no way to tell that these provisions of RCRA would apply.

The originally noticed regulations were revised during the first post hearing revisions as follows:

Subsections (b) and (d) were revised; subsection (c) was removed; subsections (d) and (e), were redesignated as (c) and (d); and new subsections (e), (f) and (g) were added. These changes were made: to incorporate the final rule for the "Second-Third" RCRA list wastes which was published in the June 23, 1989 Federal Register; and to accommodate the correction notice published in the February 27, 1989 and May 2, 1989 Federal Register.

The introductory paragraph of subsection (a) was revised in response to public comment (Comment No. A210).

A number of non-substantive changes were also made to correct grammatical and typographical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

In response to OAL's comments on the package, the following changes were made.

Parallel citations to the U.S.C. were added next to RCRA references.

The section was divided into subsections.

Section 66268.13: This section conforms to the corresponding 40 CFR 268.13. In response to OAL's comments, parallel citation to the U.S.C. was added next to the RCRA Section 3001 reference.

Section 66268.29: This section contains the language of new Section 67702, Title 22, CCR, which became operative June 23, 1989 and further revised on January 27, 1990. It is intended to list the non-RCRA wastes subject to land disposal restrictions.

The first post-hearing revision to Section 66268.29 consisted of changing the title and revising the language to accommodate a public comment (Comment No. A211).

In the second post hearing changes, the section was again revised to incorporate the amendment to Section 67702, Title 22, CCR, which became operative January 27, 1990. In addition, several subsection numbers were reserved for non-RCRA wastes which are currently undergoing rulemaking.

Further revisions were made to add newly adopted State regulations subsections 67702(b)(7), (10) and (11), Title 22, CCR, as subsections (g), (j) and (k) respectively.

Following the post-OAL public comment period, newly adopted (in separate rulemakings) Sections 67702(b)(3), (b)(4), (b)(5), (b)(8), and (b)(9) were added as subsections (c), (d), (e), (h), and (i) respectively.

ARTICLE 3: ARTICLE OVERVIEW:

This article contains prohibitions from land disposal for specific hazardous wastes. The specific hazardous wastes addressed in this article cannot be disposed to land unless they meet requirements specified in the article.

Section 66268.30: This section prohibits the land disposal of the spent solvent wastes listed in Section 66261.31 and sets forth conditions under which prohibited hazardous wastes can continue to be land disposed; it is based on 40 CFR Section 268.30. 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), the words "except in an injection well" have been deleted. RCRA itself establishes a separate schedule for prohibiting disposal of untreated hazardous wastes in injection wells. Under California Hazardous Waste Control law, injection well disposal is just another form of land disposal and is banned concurrently with all other forms of land disposal.

40 CFR Subsection (a)(1) is being deleted because the State is not adopting the special exemptions for small quantity generators found in the section referred to in this subsection, 40 CFR Section 261.5.

In subsection (a)(3), the reference to subsection (a)(3) is being deleted. Because 40 CFR subsection (a)(1) is being deleted, these subsections have been renumbered and the reference to (a)(3) would now be incorrect.

In subsection (b), the reference to subsection (a)(4) is being deleted. Because 40 CFR subsection (a)(1) is being deleted, these subsections have been renumbered and the reference to (a)(4) would now be incorrect.

40 CFR subsection (d)(2) is being deleted because the Department is not adopting the exemption from the land disposal prohibitions found in 40 CFR Section 268.5.

Changes were made to the originally noticed regulation to correct grammatical and typographical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

In response to OAL's comments, parallel citations to the U.S.C. were added next to the RCRA and CERCLA section references.

Section 66268.31: This section prohibits the land disposal of dioxin-containing wastes listed in Section 66261.31; it is based on 40 CFR Section 268.31. 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:

40 CFR subsection (d)(2) is not being adopted because the exemption from the land disposal prohibitions found in 40 CFR Section 268.6 is not being adopted.

Non-substantive changes were made to the originally noticed regulation to correct grammatical and typographical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

Section 66268.32: This section prohibits the land disposal of the California list wastes; it is based on 40 CFR Section 268.32. 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), the words "except in an injection well" have been deleted. RCRA itself establishes a separate schedule for prohibiting injection well disposal of untreated hazardous wastes. In California Hazardous Waste Control law, injection well disposal is just another form of land disposal and is banned concurrently with all other forms of land disposal.

New subsections (a)(4) and (a)(5) were added. These sections establish levels at which liquid hazardous wastes containing cyanides and liquid hazardous wastes containing specified metals respectively are prohibited from land disposal. These provisions appear in current State law as the definition of "Restricted Hazardous Waste" found in H&SC Section 25122.7; they are banned from land disposal in Title 22 Sections 66900 and 66905, Title 22, CCR. These provisions are being added here to preserve the stringency of current State law.

40 CFR Section 268.32(g)(1) is being deleted because the exemption from the land disposal prohibitions found in 40 CFR Section 268.6, which is not being adopted, is not allowed under State law.

In subsections (i) and (j), the reference to RCRA Section 3004(d) is being deleted because Chapter 18 of these proposed regulations contains all the provisions of that section of RCRA.

New subsection (1)(3) is being added to extend the analysis requirements of the federal land disposal restriction program to the non-RCRA land disposal restriction program which currently exists in Article 15, Chapter 30, Division 4, Title 22, CCR. Analysis is required to determine if a waste is restricted; the language of 40 CFR applied only to the land

bans of 40 CFR. In adopting the format of 40 CFR, the State must include its own land bans to preserve the stringency of existing State law and must apply this analysis language to wastes to determine if those wastes are land disposal restricted.

The first post-hearing revisions to the originally noticed Section 66268.32 are as follows:

Subsections (a), (a)(1), (a)(2), (a)(3), (a)(4), (e), (e)(1) and (e)(2) were revised to make the effective dates conform with the existing effective dates in Section 66905, Article 15, Division 4, Title 22, CCR.

Subsections (k), (l), (m) and (n) were added to adopt the language of existing Sections 66905, 66910 and 66925, Article 15, Title 22, CCR, which are the Department's land ban regulations not covered elsewhere in Chapter 18. These are: a) the scheduled restriction for non-RCRA organic sludges and solids containing halogenated organic compounds on July 8, 1992, provided in Section 66905; b) the exemption for land disposal of lab packs containing non-RCRA hazardous wastes provided in Section 66910, Title 22, CCR, and the categorical exemption for non-RCRA wastes from land disposal restrictions contained in Section 66925, Title 22, CCR. It is necessary for these provisions to be retained and incorporated in this section to preserve the State's own land bans.

A number of non-substantive changes were also made to correct grammatical and typographical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

The second post-hearing revisions to the originally noticed Section 66268.32 are as follows:

Subsection (a)(3) was eliminated and subsection (e)(1) was revised in response to public comment (Comment No. 19AW).

Subsections (f) and (n) were revised in response to public comment (Comment Nos. 19AX and 19AY).

In response to OAL's comments on the package, the following changes were made:

Parallel citations to the U.S.C. were added next to RCRA and CERCLA section references.

In subsection (i), "Third Edition" was added next to "U.S. EPA Publication No. SW-846".

In subsection (1)(2) and (1)(3), federal Department of Transportation (DOT) regulations as they "existed on November 17, 1981 or as amended" were changed to as they "existed on October 1, 1989".

Section 66268.33: This section prohibits the land disposal of the first third of the listed hazardous wastes found in proposed Chapter 11, Article 4; it is based on 40 CFR Section 268.33. 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:

40 CFR subsection (d)(2) is being deleted because the exemption from the land disposal prohibitions found in 40 CFR Section 268.6 is not being adopted.

The originally noticed regulations were revised to accommodate the corrections to federal regulations issued in the September 6, 1989 Federal Register.

A number of non-substantive changes were made to the regulations originally noticed to correct typographical and grammatical errors. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

Section 66268.34: This new section is added to the regulation originally noticed to incorporate current federal regulations existing as of June 23, 1989. This section establishes prohibitions from land disposal for the second third of the listed hazardous wastes found in proposed Chapter 11, Article 4; it is based on 40 CFR Section 268.34. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

In response to OAL's comments, in subsection (h), a parallel citation to the U.S.C. was added next to the RCRA Section 3004(d) reference.

Also, in subsections (b) and (c)(1), references to underground injection-related sections of 40 CFR inadvertently left in were deleted, because the HWMA does not provide any exemption to underground injection.

Section 66268.35: This section conforms to the corresponding federal regulation in 40 CFR 268.35, which was added as part of the final rule for Third Third Scheduled Waste (55 FR 22688 dated June 1, 1990).

ARTICLE 4: ARTICLE OVERVIEW:

This article establishes treatment standards for RCRA wastes. The wastes addressed herein must be treated to meet these standards before they can be land disposed.

Section 66268.40: This section establishes the applicability of the treatment standards set forth in the rest of this article; it is based on 40 CFR Section 268.40. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons.

Section 66268.41: This section establishes treatment standards expressed as concentrations in waste extract for solvent wastes; it is based on 40 CFR Section 268.41. 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 originally noticed regulations were revised in the first post-hearing revisions to incorporate the changes in the federal regulations published in Federal Register on June 23, 1989. Also, the section was revised to incorporate additional changes in the federal regulations (55 FR 22689 dated June 1, 1990).

A number of non-substantive changes were made to the regulations originally noticed to correct typographical and grammatical errors. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

Section 66268.42: This section establishes treatment standards as specified treatment technologies for specified hazardous wastes; it is based on 40 CFR Section 268.42. 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 (b), the first two sentences were replaced by the equivalent provision from H&SC Section 25179.6(b). This provision is necessary because any person submitting such a petition to the Department must first demonstrate that he has permission from the EPA to use an alternative method for treating RCRA hazardous waste.

In subsection (b), the statement that an alternative treatment "provides a measure of performance equivalent to that achieved by" is being replaced by the language used in H&SC Section 25179.6 to be consistent with the California statute.

The statutory statement is more stringent by requiring that the alternative method be equivalent to or better than the prescribed method.

The originally noticed regulations were revised in the first post-hearing revisions to incorporate the changes in the federal regulations published in the Federal Register on June 23, 1989. These changes are the addition of new subsections (a)(3) and (a)(4).

In response to OAL's comments on the package, subsection (a) and (b) were revised, and subsections (c) and (d), Table 1, Table 2 and Table 3 were added to incorporate additional changes in federal regulations (55 FR 22692, dated June 1, 1990).

A number of non-substantive changes were made to the regulations originally noticed to correct typographical and grammatical errors.

Section 66268.43: This section establishes treatment standards as waste concentrations for specified hazardous wastes; it is based on 40 CFR Section 268.43. 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 first post-hearing revisions to the originally noticed Section 66268.5 are as follows:

Subsection (a) was revised and Table CCW was revised and new subtables were added to incorporate the changes in the federal regulations published in the Federal Register on June 23, 1989.

A number of non-substantive changes were made to the regulations originally noticed to correct typographical and grammatical errors. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

The second post-hearing revisions to the originally noticed Section 66268.43 are as follows:

Table CCW was revised in response to public comment (Comment No. 19AZ).

In response to OAL's comments on the package, subsection (a) and Table CCW were revised and subsection (c) was added to incorporate additional changes in the federal regulations (55 FR 22701 dated June 1, 1990).

Section 66268.44: This section establishes the procedures necessary to obtain a variance from treatment standards; it is based on 40 CFR Section 268.44. 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:

40 CFR subsections (b) through (e) were deleted and replaced by new language. The variance procedure in these subsections is reserved for the U.S. EPA Administrator; the Department cannot issue these variances.

New subsection (b) is being added; this subsection requires that an applicant for a State variance from the treatment standards demonstrate that his waste would not be subject to federal treatment standards or that he has received a variance from the treatment standards from the EPA Administrator. This subsection is necessary because the State cannot issue a variance from a federal treatment standard even after the State becomes authorized.

New subsection (c) requires that each applicant for a variance from the treatment standards demonstrate that he meets several conditions to be eligible for a variance. These conditions are taken directly from H&SC Section 25179.8(b)(1) through (b)(4); they are being repeated here for clarity. The Department feels that discussing variances at this point in the regulations without discussing the statutory requirements for variances may be confusing; thus, for clarity, these statutory requirements are being repeated here.

40 CFR subsections (i) and (j) were deleted and replaced by new language. The variance procedure in these subsections is reserved for the U.S. EPA Administrator; the Department cannot issue these variances.

New subsection (j) is being added. This subsection requires that a person requesting a site-specific variance demonstrate that his waste is not subject to the federal treatment standards or that he has received a variance from the EPA. This subsection is necessary because the State cannot issue variance from a federal treatment standard even after the State becomes authorized.

New subsection (h) requires that each applicant for a site-specific variance from the treatment standards demonstrate that he meets several conditions to be eligible for a variance. These conditions are taken directly from H&SC Section 25179.8(b)(1) through (b)(4); they are being repeated here for clarity. The Department feels that discussing variances at this point in the regulations without discussing the statutory requirements for variances may be confusing; thus, for clarity, these statutory requirements are being repeated here.

The first post-hearing revisions to the originally noticed Section 66268.5 are as follows:

Subsection (f) is revised in response to public comment (Comment No. A191).

Subsections (k) and (l) were added to incorporate the language of existing Sections 67770(d) and 67770(e), Title 22, CCR relating to the setting of time frames for the processing of the application for extension required by the Permit Reform Act of 1981.

A number of non-substantive changes were made to correct typographical and grammatical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

In response to OAL's comments, Government Code Section 15376 was added to the authority and reference citations.

ARTICLE 5: ARTICLE OVERVIEW:

This article contains one section which establishes a prohibition on storage of restricted hazardous wastes in lieu of treatment.

Section 66268.50: This section establishes a prohibition on storage of restricted hazardous wastes in lieu of treatment; it is based on 40 CFR Section 268.50. 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), a reference to Article 7.7 of Chapter 6.5 of the H&SC is being added. This addition is necessary to apply the prohibitions on storage to non-RCRA hazardous wastes which are prohibited from land disposal pursuant to California statute.

In subsection (e), the phrase "or is a non-RCRA hazardous waste" is being added to the classes of wastes for which the prohibition against storage applies. This phrase is being added to maintain the stringency of existing State law which doesn't contain a prohibition against storage of restricted wastes. However, storage of any hazardous waste is subject to the facility requirements of Chapters 14, 15 and 20 and can be disallowed by the permit conditions if that storage poses a threat to human health and safety or the environment.

The originally noticed regulations were revised in the first post-hearing revisions as follows:

Subsection (d) is revised to incorporate the correction notice published in the September 6, 1989 Federal Register.

Subsection (a)(3) is revised to incorporate the language of existing Section 67721(a)(3). Section 67721, Title 22, CCR corresponds to 40 CFR Section 268.50.

A number of non-substantive changes were made to correct typographical and grammatical errors and to improve clarity. Some of the changes were made in response to public comment (Comment Nos. A191 and A203).

In response to OAL's comments, parallel citations to the U.S.C. were added next to RCRA Section 3004 references in subsections (a) and (e). In subsection (d), "national capacity variance" was changed to "nationwide capacity variance".

ARTICLE 10: ARTICLE OVERVIEW:

This article contains one section (Section 66268.110) which specifies the non-RCRA hazardous wastes that are prohibited from land disposal and the implementation date of the prohibition. The specific non-RCRA hazardous wastes addressed here cannot be disposed to land unless they meet specifications addressed in this article.

Section 66268.100: This new section incorporated Section 66715, Title 22, CCR, which contains prohibitions for non-RCRA metal-containing wastes and PCB wastes. There were no changes from the original regulations except: the renumbering of references to other Title 22 regulations to conform to the proposed regulations' number designation; and the reserving of subsection numbers for non-RCRA wastes undergoing rulemaking at this time.

Further revisions were made to add newly adopted subsections 66715(a)(7), (10) and (11), Title 22, CCR, as subsections (a)(7), (10) and (11) respectively.

Following the post-OAL public notice period, newly adopted (in separate rulemakings) Title 22, CCR, Sections 66715(a)(3), (a)(4), (a)(5), (a)(8), and (a)(9) were added as subsections (a)(3), (a)(4), (a)(5), (a)(8), and (a)(9) of this section respectively.

ARTICLE 11: ARTICLE OVERVIEW:

This article establishes treatment standards for non-RCRA wastes. This article is based on Article 41, Chapter 30, Division 4, Title 22, CCR, entitled "Treatment Standards-RCRA and Non-RCRA Wastes Categories." The non-RCRA wastes addressed here must be treated to meet these standards before they can be land disposed.

Section 66268.105: This section retained the requirements of Section 67750, Title 22, CCR; which established the applicability of the treatment standards set forth in the rest of this Article. This section conforms to Section 67750 except it now specifically provides for non-RCRA hazardous wastes only; any provisions referring to RCRA wastes have been deleted.

Further revisions were made to add newly adopted subsections 67750(e) and (f), Title 22, CCR, as subsections (d) and (e), respectively.

Section 66268.106: This section retained the requirements of Section 67755, Title 22, CCR, which established treatment standards specified as concentrations in waste extract. This section conforms to Section 67755 except it now specifically provides for non-RCRA hazardous wastes only; any provisions referring to RCRA wastes have been deleted.

Further revisions were made to add newly adopted subsection 67755(b)(3), Title 22, CCR with a non-substantive change, as subsection 66268.106(a)(3).

In response to OAL's comments in subsection (a), the reference was added to identify where Table I-CCWE is located. Also, typographic errors were corrected in Table I-C CCWE.

Following the post-OAL public notice period, newly adopted (in separate rulemakings) Title 22, CCR, Sections 66755(b)(1), (b)(2), (b)(4), and (b)(5) were added as subsections (a)(1), (a)(2), (a)(4), and (a)(5) of this section respectively.

Section 66268.107: This section retained the requirements of Section 67760, Title 22, CCR, which established treatment standards as waste concentrations for specified hazardous wastes. This section conforms to Section 67755, Title 22, CCR, except it now specifically provides for non-RCRA hazardous wastes only; any provisions referring to RCRA wastes have been deleted.

Following the post-OAL public notice period, newly adopted (in separate rulemakings) Title 22, CCR, Section 66760(b)(2) and revised section 67760(c) were added as subsections (b) and (c) of this section respectively.

Section 66268.108: This section is reserved for establishing treatment standards expressed as specified treatment technologies for specified non-RCRA hazardous wastes.

Section 66268.110: This section retained the requirements of Section 67780, Title 22, CCR, which established treatment standards for PCB wastes as specified treatment technologies and the associated performance level or the maximum concentration level.

Section 66268.112: This section contains newly adopted Section 67785, Title 22, CCR on the treatment standard for non-RCRA aqueous and liquid organic wastes.

Section 66268.113: This section contains newly adopted Section 67786, Title 22, CCR on the treatment standard for non-RCRA solid hazardous waste with organics.

ARTICLE 12: ARTICLE OVERVIEW:

This article establishes incineration requirements for certain non-RCRA hazardous wastes. This article is based on Article 15.5, Chapter 30, Division 4, Title 22, CCR. Non-RCRA wastes that meet the criteria established in this article must be incinerated or treated by other authorized method.

Section 66268.120: This section retained the requirements of Section 66940, Title 22, CCR, which established the criteria for treating the wastes by incineration or other authorized method based on the heating value of the wastes.

Section 66268.121: This section retained the requirements of Section 66941, Title 22, CCR, which established the criteria for treating the wastes by incineration or other authorized method based on the amount of volatile organics in the wastes.

Section 66268.122: This section retained the requirements of Section 66942, Title 22, CCR, which established the exemption for the incineration requirements established in Sections 66268.120 and 66268.121 due to unavailability of adequate treatment capacity.

Section 66268.124: This section retained the requirements of Section 66944, Title 22, CCR, which established the procedures for obtaining an emergency variance from the incineration requirements established in Sections 66268.120 and 66268.121.

Appendix I to Chapter 18: This appendix contains the Toxicity Characteristics Leaching Procedure or TCLP. The testing procedure is used to identify those wastes which are hazardous pursuant to Title 22, CCR, Section 66261.24 and to demonstrate compliance with treatment standards. This appendix conforms to the corresponding federal appendix except for the generic changes explained in the introduction to this statement of reasons.

A number of non-substantive changes were made to correct typographical and grammatical errors and to improve clarity. Some of the changes were made in response to public comments (Comment Nos. A191 and A203).

The appendix was further modified to conform with the final rule adoption by the EPA in 55 FR 61, March 29, 1990, pp 11798 - 11877 and 55 FR 126, June 29, 1990 pp 26986 - 26998. Also, in response to OAL's comments, typographic errors were corrected in paragraph 5.3 and Table 4.

Appendix II to Chapter 18: This appendix contains a table setting forth the treatment standards for specified solvent wastes as concentrations in the waste extract. This appendix conforms to the corresponding federal appendix except for the generic changes explained in the introduction to this statement of reasons. A number of non-substantive changes were made to the appendix originally noticed to correct typographical and grammatical errors and to improve clarity. Some of these changes were made in response to public comment (Comment No. A191).

Appendix III to Chapter 18: This appendix contains a table setting forth a list of halogenated organic compounds regulated under Section 66268.32. This appendix conforms to the corresponding federal appendix except for the generic changes explained in the introduction to this statement of reasons and as follows:

A heading, "EPA listed compounds" has been added after the introductory verbiage. This heading is necessary to make clear that this list contains only compounds from the original EPA list of Halogenated Organic Compounds (HOCs).

The originally noticed Appendix III was changed in response to public comment (Comment No. A214). The appended "California listed compounds" were removed.

Appendix III-A to Chapter 18: This new appendix contains a table setting forth a list of halogenated organic compounds found in existing Articles 9 and 15 of Title 22, Division 4, Chapter 30, CCR. This appendix was formerly added in the originally noticed Appendix III. In response to public comment, this new appendix is created to avoid confusion in the use of either Appendix III or Appendix III-A (Comment No. A214). Appendix III HOCs applies to RCRA hazardous wastes and both the Appendix III and Appendix IV

HOCs apply to non-RCRA hazardous wastes. Appendix III-A was renamed from Appendix IV due to the changes in federal regulations (55 FR 22713 dated June 1, 1990), which added Appendices IV, V, VI and VII.

Appendices IV, V, and VII to Chapter 18: These appendices conformed to the corresponding federal regulations: Appendices IV, V, VI, and VII to 40 CFR 268. These were added as part of the final rule for Third Third Scheduled Wastes (55 FR 22713 dated June 1, 1990).

Appendix VIII to 40 CFR 268: This underground injection related Appendix (55 FR 22718, dated June 1, 1990), was not adopted by the Department because the HWMA does not provide any exemption to underground injection; the underground injection is considered a form of land disposal.