

## CHAPTER 21: PROCEDURES FOR HAZARDOUS WASTE PERMIT DECISIONS

This chapter is primarily based on Subpart A of 40 Code of Federal Regulations (CFR), Part 124. Some portions of Chapter 21 are based on Articles 2 and 4 (Division 4, Chapter 30) of existing Title 22 of the California Code of Regulations (CCR), Chapter 6.5 of Division 20 of the Health and Safety Code (H&SC), Chapter 5 (Title 2, Division 3, Part 1) of the Government Code, or Chapter 4.5 (Title 7, Division 1) of the Government Code. It sets forth the Department's procedures for issuing, modifying, denying, revoking/reissuing, and terminating permits for hazardous waste facilities (except for permits-by-rule and emergency permits which are governed by Chapter 20). The chapter title is being slightly modified from the title of 40 CFR, Part 124 by substituting "Hazardous Waste Permit Decisions" for "Decisionmaking", and the Subpart A title is being deleted (since no Article title is necessary in this case). The revised title more accurately describes the contents of this chapter.

In addition to the generic changes specified in the introduction to this Statement of Reasons (SOR), the two changes discussed below are being made throughout this chapter:

References to other federal permit programs, which are not relevant to the Department's hazardous waste permit program, are being deleted. Specifically, those other federal programs are the UIC, PSD, 404, and NPDES programs. Part 124 of 40 CFR applies to all of the referenced federal regulatory programs. However, these proposed state regulations apply only to the hazardous waste program. This deletion does not change the intent or meaning of the regulations as they apply to California's hazardous waste permit program. Included in this generic deletion are both portions of sections or subsections which pertain to the other federal programs as well as entire sections or subsections which are concerned only with programs other than the hazardous waste program. Also included in this generic change are any nonsubstantive wording changes made to accommodate the deleted references to other programs.

References to "EPA-issued" hazardous waste permits and procedures pertaining only to EPA-issued permits are being deleted. These changes are necessary because the Department will be the only permit-issuing authority in California once the state is authorized. This generic change also includes nonsubstantive wording changes made to accommodate these deletions.

40 CFR, Section 124.2: This section of the federal regulations provides definitions and acronyms applicable to 40 CFR, Part 124, which is being incorporated into the proposed state regulations as Chapter 21. The proposed regulations are being organized such that all definitions and acronyms applicable to Chapters 10-44 of Division 20 of Title 22, CCR are being set forth in Sections

66260.10 (definitions) and 66260.12 (acronyms) (except that a few definitions unique to only one section are set forth in that section rather than in Section 66260.10). Therefore, 40 CFR, Section 124.2 is not being included in the proposed state regulations. All of the definitions and acronyms contained in 40 CFR, Section 124.2 are either being incorporated into Section 66260.10 or 66260.12, in some cases with modifications, or deleted entirely for various reasons.

The definitions and acronyms listed below are contained in 40 CFR, Section 124.2(a) and are identical to definitions and acronyms found in 40 CFR, Section 270.2 (except that a few of the 124.2 definitions include references to programs other than RCRA which are not applicable to these regulations). Therefore, reference is made to the SOR for 40 CFR, Section 270.2 for a discussion of how the following definitions and acronyms are being addressed in the proposed regulations:

Administrator	Permit
Application	Person
CWA	RCRA
Director	Regional Administrator
Draft permit	Schedule of compliance
EPA	SDWA
Facility or activity	Site
Major facility	State
NPDES	State Director**
Owner or operator	UIC

\*\*The 124.2 version of the definition for "State Director" contains several references to "interstate agency" which are not applicable to the hazardous waste program in California.

The following definitions contained in 40 CFR, Section 124.2(a) are not being included in the proposed regulations because they pertain solely to U.S. Environmental Protection Agency (EPA) permitting programs other than Resource Conservation and Recovery Act (RCRA) and are not applicable to these regulations:

- Applicable standards and limitations
- Consultation with the Regional Administrator
- General permit
- Section 404 program
- Variance

The following definitions contained in 40 CFR, Sections 124.2(a), (b) and (c) are not being included in the proposed regulations for the reasons discussed below:

Appropriate Act and regulations: This term is not being used in these regulations, and, therefore, is not being included in the definitions section.

Interstate Agency: This term is not applicable to the hazardous waste program in California.

Section 124.2(b): This section contains a discussion of the use of the terms "Director" and "Regional Administrator" which is not appropriate in the context of the state regulations.

Section 124.2(c): This section pertains solely to Subparts E and F of Part 124 which are not being incorporated into these regulations.

Section 66271.1: This section, which is based on 40 CFR, Section 124.1, specifies the purpose and scope of the Chapter 21 regulations. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

Section 66271.1(a): The word "denying" is being added in the first sentence of this subsection to complete and correct the description of the contents of this chapter.

Section 66271.1(a): The last two sentences in this section, which pertain to permits handled by the Corps of Engineers, are being deleted because this language is not applicable to the hazardous waste permitting program.

Section 66271.1(b): Language that refers to the structure of 40 CFR, Part 124 is being deleted. The deleted language addresses several other federal programs which are not relevant to the hazardous waste program.

40 CFR, Sections 124.1(c), (d), (e), and (f): These four sections are not being included in the proposed state regulations. Subsection (c) references three (3) types of hearings, two of which apply to federal programs other than the hazardous waste program. The provisions in subsection (c) relating to the hazardous waste program are being deleted because they are duplicative of other Chapter 21 regulation sections and are, therefore, unnecessary. The portions of subsection (c) pertaining to other federal programs are being deleted because they are not applicable to these state regulations. Subsections (d) and (f) provide for the consolidated processing of multiple types of federal permits. Since the state is seeking authorization for the hazardous waste permitting program only, these procedures are not applicable to these state regulations. Subsection (e)

references procedural requirements which states must follow to obtain authorization for federal programs. These requirements are not appropriate for inclusion in the state regulations.

Section 66271.2: This section, which is based on 40 CFR, Section 124.3, specifies the requirements concerning the submission and initial processing of applications for permits. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

Section 66271.2(a): The second sentence of this paragraph, which states that a permit application is deemed to be submitted on the date it is received by the Department, is being added for clarification and to conform with existing Title 22, CCR, Section 66316(a). The federal regulations do not specify when an application is deemed to be submitted.

Section 66271.2(a): The second sentence of this paragraph, which states that a permit application is deemed to be submitted on the date it is received by the Department, is being added for clarification and to conform with existing Title 22, Section 66316(a). The federal regulations do not specify when an application is deemed to be submitted.

Section 66271.2(c): This section conforms with 40 CFR, Section 124.3(c) except for the following changes:

The provisions of this section pertaining to the time periods allowed for permit completeness reviews and the requirements for notifying applicants of the Department's determination of incompleteness are being revised to conform to state law (H&SC, Section 25199.6 and Chapter 4.5 of Division 1 of Title 2 of the Government Code) which is more stringent than the corresponding federal regulation. In addition, language is being added to provide permit applicants with an appeal process in the event the Department determines their application (along with supplemental materials) is incomplete. The time deadlines proposed for this appeal process are based on the appeal time period (thirty (30) days) allowed applicants under proposed Section 66271.18 and the the sixty (60) day time period allowed under State law and this proposed regulation section for Departmental permit completeness reviews.

Section 66271.2(d): This section, which states that the Department may deny a permit for any cause specified in H&SC, Section 25186, is being added to the regulations for completeness and clarification. The federal regulations do not include these same permit denial standards.

Section 66271.2(e): Two new sentences are being added to the end of the section which pertain to denial of permit

applications as a result of nonresponse or incomplete or unsatisfactory responses by applicants to notices of deficiency. These changes are necessary to comply with existing, more stringent state statutes (H&SC, Section 25200.8).

40 CFR, Section 124.4: This section is not being included in the proposed state regulations. The provisions of this section concern the consolidation of permits when EPA is issuing permits to the same facility under more than one federal program (i.e., RCRA, PSD, NPDES, UIC and 404). These regulations only pertain to hazardous waste permits and the Department will only be authorized to issue permits under the State and RCRA-equivalent hazardous waste programs. Therefore, this federal regulation section is not appropriate for inclusion in these proposed state regulations.

Section 66271.4: This section, which is based on 40 CFR, Section 124.5, pertains to permit modifications, revocations and reissuances, and terminations. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

Section 66271.4(a): The phrase "or H&SC, Section 25186" is being added at the end of the third sentence. This change is necessary to provide a complete listing of the regulatory and statutory authorities for permit modification, revocations and reissuances, and terminations.

Section 66271.4(b): The last three sentences in this section delineate internal EPA procedures for informal appeals to the EPA Administrator of denials of requests for permit modification, revocation and reissuance, or termination. Since the procedures are specific to EPA, not relevant to the Department's hazardous waste program, and not applicable in the context of state regulations, they are being deleted.

Section 66271.5: This section, which is based on 40 CFR, Section 124.6, specifies procedures concerning draft permits. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter.

Section 66271.6: This section, which is based on 40 CFR, Section 124.7, specifies requirements pertaining to preparation of Statements of Basis. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

Section 66271.7: This section, which is based on 40 CFR, Section 124.8, specifies requirements pertaining to the preparation and content of fact sheets. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter.

Section 66271.8: This section, which is based on 40 CFR, Section 124.9, specifies requirements concerning the administrative record for draft permits. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

Section 66271.8(c): The phrase "issuing Regional Office" is being replaced by "Department". In this instance, this responsibility will belong to the Department once the State is authorized.

40 CFR, Section 124.9(d): This section, which specifies the effective date of this federal regulation, is is being deleted. This change is being made because this language is not appropriate in the context of state regulations.

Section 66271.9: This section, which is based on 40 CFR, Section 124.10, pertains to public notices of permit actions and public comment periods. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

Section 66271.9(c)(1)(B): The phrase "RCRA, UIC, PSD, NPDES or 404 permit" is being changed to "permit". This change is necessary to conform with existing more stringent state regulations (Title 22, CCR, Section 66396(c)(1)(B)) which require the Department to notice any agency issuing any kind of permit to the same facility, not just the permits listed in the federal regulation.

Additionally, the phrase "when the draft permit is prepared by the State" at the end of this section is being deleted. Once the state is authorized, only the state will prepare the the draft permits for hazardous waste facilities in California. Thus, this language is not necessary in the context of state regulations.

Section 66271.9(c)(1)(D)(3.): The word "Regional" preceding the phrase " and State-funded newsletters" is being replaced by the words "EPA Region IX". In the context of this regulation, the word "Regional" refers to the EPA Regional Office. Thus, in order to be more specific, reference is being made to the EPA Regional Office for California.

Section 66271.9(c)(3): This section is unnecessary because the requirements of Subsections 66271.9(c)(1) & (2) satisfy the requirements of Subsection 66271.9(c)(3). Therefore, this subsection is being deleted.

Section 66271.9(d)(1)(D): The phrase "or draft general permit, as the case may be" is being deleted. In this instance, "draft general permit" is referring to federal NPDES and 404 permits and not to state hazardous waste permits. There are no general hazardous waste permits. Thus, this phrase is not applicable to these regulations.

Section 66271.9(d)(2): The references to 40 CFR, Part 124 Subparts E and F are being deleted. These referenced federal regulation sections describe hearing procedures used for federal, non-RCRA programs, and, therefore, are not applicable to these regulations.

Section 66271.9(e): The phrase "if any", which appears twice at the end of the second sentence, is being deleted. This applies to other federal programs covered by this part, where there may be no permit application or draft permit. For California hazardous waste permits, there will always be an application and a draft permit.

Section 66271.10: This section, which is based on 40 CFR, Section 124.11, pertains to public comments and requests for public hearing. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter.

Section 66271.11: This section, which is based on 40 CFR, Section 124.12, specifies requirements concerning public hearings. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

Section 66271.11(b): The phrase "and EPA is the permitting authority" is being deleted, as this language is not applicable in the context of the state regulations.

40 CFR, Section 124.12(e): This federal regulation section, which allows the processing of permits under alternative hearing procedures in Subpart F of 40 CFR, Part 124, is not being included in these proposed regulations. This is a discretionary option provided to the EPA Regional Administrator, but not available to the state. Subpart F refers to nonadversary panel procedures. The state procedures for hearings are more stringent as provided in Section 66271.12(a), (b) and (c).

The "EFFECTIVE DATE NOTE" which appears at the end of this section is being deleted in its entirety. The note is a historical reference to the effective date of subsection (e) and is relevant only to the federal regulations, not to the state regulations.

Section 66271.12: This section, which is based on 40 CFR, Section 124.13, concerns the obligation to raise issues and provide information during the public comment period. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and as follows:

"Thirty (30) days" is being changed to "forty-five (45) days" in the next to the last sentence in this section, which pertains to the length of the public comment period. This change is necessary to conform to Section 66271.9(b)(1) which specifies that the minimum public comment period for hazardous waste facility draft permits is forty-five (45) days.

Section 66271.13: This section, which is based on 40 CFR, Section 124.14, specifies requirements concerning the reopening of the public comment period. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter.

Section 66271.14: This section, which is based on 40 CFR, Section 124.15, pertains to the issuance and effective date of a permit. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

Section 66271.14(a): The second sentence in this section is being added to conform to existing, more stringent state statutory requirements relating to final permit decisions (H&SC, Section 25199.6 and the Government Code, commencing with Section 65920).

Section 66271.15: This section, which is based on 40 CFR, Section 124.16, sets forth requirements and procedures concerning stays of contested permit conditions. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter.

Section 66271.16: This section, which is based on 40 CFR, Section 124.17, specifies requirements concerning responses to comments. This section conforms to the corresponding federal regulation except

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

Section 66271.16(a): The sentence which specifies the requirement for states to issue responses to comments is being deleted. This language will not be applicable when the state is authorized and is issuing permits in lieu of EPA.

Section 66271.17: This section, which is based on 40 CFR, Section 124.18, specifies requirements concerning the administrative record for final permits. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

Section 66271.17(c): This section conforms with 40 CFR, Section 124.18(c) except for the following changes:

The word "should" is being replaced by the word "shall". The use of the word "should" in the context of this section is ambiguous and nonregulatory in nature. The word "shall" more clearly reflects the intent of this regulation.

The phrase "or publication by the Agency" at the end of the first sentence is being deleted. This phrase refers to various documents routinely published by EPA, but not by the state. Therefore, this language is not applicable in the state regulations.

Section 66271.17(e): The phrase "issuing Regional Office" is being replaced by "Department". In this instance, this responsibility will belong to the Department once the state is authorized.

Section 66271.18: This section, which is based on 40 CFR, Section 124.19, specifies requirements concerning the appeal of permit decisions. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR and in the overview for this chapter and as follows:

The word "permits" in the section title is being changed to "permit decisions" for clarification only.

Section 66271.18(c): The second sentence in this subsection, which pertains to "final agency action", is being deleted for clarification, since this term is more completely defined in Sections 66271.18(e) and (g).

Section 66271.18(d): The reference to a U.S. Code requirement applicable only to federal agency actions and appeal procedures

is being deleted. This reference is not applicable in the context of state regulations.

Section 66271.18(e): This section is being added to explain that the Department will initiate the proceedings required by H&SC, Section 25186.1 and the Administrative Procedure Act by serving a Statement of Issues or an Accusation after the time to petition for review has expired, review has been denied, or review has been completed. For ease of use, appropriate sections of the Government Code containing the proceedings and documents to which reference is made are also being incorporated in the text.

Section 66271.18(f): This section is being added to make clear that judicial review of decisions resulting from Administrative Procedure Act proceedings is authorized under Government Code, Section 11523.

Section 66271.18(g): This section conforms with 40 CFR, Section 124.19(f)(1) except for the following changes:

The phrase "requested by a party other than the applicant for or holder of the permit" is being added to clarify that subsection (g) deals with judicial review procedures for parties other than permit applicants and holders. State law provides an evidentiary administrative hearing for permit applicants and holders, which is not provided for other parties.

The word "statutes" is being substituted for the word "Act". The word "Act" refers to a specific federal law (RCRA), whereas the word "statutes" is more appropriate when referring to the relevant state statutes.

The phrase "issued or denied" is being changed to "issued, denied or terminated". This change is being made for clarification, since these regulations cover permit terminations, as well as permit issuances and denials.

The phrase "specified in subsection (a) of this section and Department administrative appeal procedures specified in subsection (e) of this section" is being added to clarify that the permit decision is not final for purposes of judicial review until appeal procedures under the Administrative Procedure Act have been completed.

Subsections (g) (1) and (2) are replacing the language of 40 CFR, Section 124.19(f)(1)(i), (ii) and (iii). This change is necessary to make clear which events trigger issuance of the final permit decision, since the trigger events under state law are different from the trigger events under federal law.

Section 66271.19: This section, which is based on 40 CFR, Section 124.20, sets forth requirements concerning the computation of regulatory time periods. This section conforms to the corresponding federal regulation except for the generic changes specified in the introduction to this SOR.

40 CFR, Section 124.21: This section is not being included in the proposed state regulations. The provisions of this section concern the effective date of Part 124. Thus, this section pertains only to the federal regulations and is not applicable in the context of state regulations.