

CHAPTER 22: ENFORCEMENT, INSPECTIONS, AND INFORMANT REWARDS

CHAPTER OVERVIEW: This chapter specifies the inspection authority for Department representatives, the delegation of the Department's enforcement authority, the payment of reward claims to informants, and limitation of enforcement by local agencies. This chapter is based on Title 22, CCR Article 3, Title 22, CCR Section 66315, and HSC Sections 25185 and 25191.7. Language from HSC Sections 25185 and 25191.7 is being inserted into Article 3 language for consistency. Several sections are being deleted which are no longer consistent in content with statute. Although some redundancy with statute remains in this chapter, the Department believes that it is necessary for the subject matter of parts of this chapter to be in regulation form because the regulated public generally has greater access to the regulations than to the statutes.

This chapter is being inserted because there is no equivalent federal regulatory language which specifies the inspection activities and enforcement authority regarding hazardous waste site violations.

Section 66272.1: This section is based on Title 22 CCR, Section 66328 and HSC Section 25185 which specify the inspection activities for an authorized representative of the Department to conduct an inspection of any site where hazardous wastes are handled, stored, treated, processed, recovered, or disposed. The changes made to this section have eliminated language inconsistent with statute language and replaced it with existing statute language to reconstruct certain subsections to read verbatim with applicable portions of HSC Section 25185.

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

Section 66272.1 (a): This subsection is based on Title 22 CCR, Section 66328 (a) and HSC Section 25185 (a). This subsection serves as a general statement to introduce that the Director or any authorized representative of the Department may conduct any of the activities specified in paragraphs (1) through (6) of this section. The phrase "upon presentation of proper identification of authority and position" is being deleted and the phrase "at any reasonable hour of the day, do any of the following" is being added so that this subsection language is consistent with HSC Section 25185 (a) language.

Section 66272.1 (a)(1): The term "station" is being deleted and the term "facility" is being added for consistency with Section 66263.18 language.

Section 66272.1 (a)(1): The terms "establishment", "any", "place or environment", "treated", and "or treated to recover

resources" are being added from language in HSC Section 25185 (a)(1) for consistency and clarity.

Section 66272.1 (a)(2): The phrase "Obtain from any person or from the property of any person samples of waste, including samples from any vehicle in which wastes are being transported." is being deleted and replaced with the phrase "Carry out any sampling activities necessary to carry out Chapter 6.5 of the Health and Safety Code, including obtaining samples from any individual or taking samples from the property of any person or from any vehicle which any authorized representative of the Department or a local health officer reasonably believes has transported or is transporting hazardous waste. However, upon request, split samples shall be given to the person from whom, or from whose property or vehicle, the samples were obtained." to make the language consistent with HSC Section 25185 (a)(2) language.

Section 66272.1 (a)(3): The phrases "and inspect", "reasonably", and "when accompanied by a uniformed police officer in a clearly marked vehicle" are being added to make the language consistent with HSC Section 25185 (a)(3) language.

Section 66272.1(a)(4): The word "this" is being deleted, and the phrase "6.5 of Division 20 of the Health and Safety Code" is being added, to make the language consistent with HSC Section 25185 (a)(3) language.

Section 66272.1 (a)(5): The phrase "Obtain samples of any containers and photographs or facsimiles or container labels." is being deleted and replaced by the phrase "Photograph any waste, waste container, waste container label, vehicle, waste treatment process, waste disposal site, or condition constituting a violation of law found during an inspection." to make the language consistent in HSC Section 25185 (a)(5) language.

Section 66272.1 (a)(6): The phrase "By appointment, inspect and copy any pertinent records, reports, information or test results relating to the requirements of this chapter." is being deleted and replace with the phrase "Inspect and copy any records, reports, test results, or other information required to carry out Chapter 6.5 of Division 20 of the Health and Safety Code." to make the language consistent with HSC Section 25185 (a)(4) language.

Subsection 66328 (7) language is being deleted to be consistent with changes made to Sections 66272.1 (a) and 66272.1 (a)(6).

Section 66272.1 (b): This subsection is based on Title 22 CCR, Section 66328 and HSC Section 25185 (b) which state that

an inspector will comply with all applicable safety precaution measures during an inspection. The term "observe" is being deleted and replaced with the term "comply with" to make the language consistent with HSC Section 25185 (b) language.

Section 66272.1 (c): This section is based on Title 22 CCR, Section 66328 (c) and HSC Section 25185 (c) which require that an inspector file a report listing any violations found during an inspection. The term "deficiencies" is being deleted and replaced with the term "violations" to make the language consistent with HSC Section 25185 (c) language.

Section 66272.1 (f) is being deleted because the subject matter contained in this subsection is redundant with language in Section 66272.1 (a) and is less explicit language than HSC Section 25173 language, which establishes the requirements for the managing of trade secret information by the Department.

Section 66272.10 : This section is based on Title 22 CCR, Section 66360 which specifies the delegation of enforcement authority by the Department to a local public officer. Currently existing statute in HSC Section 25180 grants county health officers the authority to enforce the regulations of Title 22 CCR and the statutes in the HSC. This section is being inserted because there is no equivalent federal regulation under enforcement which specifies the conditions which must be met before the Department grants enforcement authority. The Department desires to retain its delegation authority to local public officers in the existing regulations. This section conforms to the corresponding state regulation except for the following changes:

Section 66272.10 (a): The phrase "certain specified requirements of this chapter" is being deleted and replaced with the phrase "standards and regulations adopted by the Department pursuant to Section 25150 of the Health and Safety Code" to more accurately reflect the authority in HSC Section 25180 HSC.

Section 66272.20: This section is based on Title 22 CCR, Section 66362 which specifies the procedure for receiving and reviewing claims for rewards for informants. This section conforms to the corresponding state regulation except for the following:

Section 66362 (b)(1): This subsection describes the conditions which must be met for payment of rewards. This subsection is being deleted because it is inconsistent with HSC Section 25191.7.

Section 66362 (b)(2) is being deleted because it duplicates part of HSC Section 25191.7 (a).

Section 66362 (b) (3) is being deleted because it duplicates part of HSC Section 25191.7 (b).

Section 66272.20 (b) corresponds to existing state regulation in Title 22 CCR, Section 66362 (c). The phrase "to be paid by the Department" is being added to clarify that the requirement applies only when the reward is to be paid by the Department. In addition, the form number and revision date for the form used for application for a reward was added for the December 1990 to January 1991 comment period.

Section 66362 (d) is being deleted because it is unnecessary to impose such a requirement on claims submitted to counties.

Section 66362 (e) is being deleted because it duplicates HSC Section 25191.7 (c).

Section 66362 (f) is being deleted because it is inconsistent with HSC Section 25191.7.

Section 66272 (c) corresponds to existing state regulation in Title 22 CCR, Section 66362 (g).

Section 66272.30 : This section is based on Title 22 CCR, Section 66364 and HSC Sections 25191.7, 25192, and 25197 which establish the Department's determination for the payment of reward claims to informants in the case of judgments against persons for violations of Title 22 CCR and the HSC. No changes have been made to this section.