

FINAL STATEMENT OF REASONS

This rulemaking is part of the Department of Health Services' (Department) effort to obtain authorization from the federal Environmental Protection Agency (EPA) to administrate and enforce the State's hazardous waste control program in lieu of the federal program. Under federal law, hazardous waste is regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. section 6921 et seq.). In RCRA, Congress explicitly stated that the federal hazardous waste control program should be delegated to the States with equivalent programs. The formal authorization process, detailed in Title 40 Code of Federal Regulations (CFR) Part 271, requires that states adopt statutes and regulations which establish authority and requirements which are equivalent to or more stringent than federal requirements established in and pursuant to RCRA.

In California, Health and Safety Code section 25159 directs the Department to pursue authorization.

To achieve RCRA authorization, the Department must demonstrate its ability to effectively implement and enforce its hazardous waste control program and must establish that California's program is equivalent to the federal RCRA hazardous waste program. California is not, however, restricted from adopting standards which are more stringent and/or broader in scope than the requirements of the federal program. The proposed rulemaking conforms the Department's Hazardous Waste Control regulation with the corresponding federal regulations except where more stringent or broader provisions were carried over. The details of this process are discussed below.

THIS RULEMAKING ACTION:

The specific purpose of this action is to satisfy the requirements of Health and Safety Code section 25159 which directs the Department to adopt necessary regulations to allow the State to receive and maintain authorization to administer the federal RCRA program in lieu of EPA. In carrying out the mandate of Health and Safety Code section 25159, the DHS is further guided by Health and Safety Code section 25159.5(a) which states:

"In adopting or revising standards and regulations pursuant to this chapter, the department shall, insofar as practicable, make the standards and regulations conform with corresponding regulations adopted by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901, et seq.)" This section does not prohibit the Department from adopting standards and regulations which are more stringent or more extensive than federal regulations."

To satisfy the mandates of Health and Safety Code sections 25159 and 25159.5 (a), the Department and EPA determined that it is

necessary to rewrite the Department's Hazardous Waste Control regulations based on the federal format. As part of this massive recodification, the Department is repealing all of the toxic substance control regulations in Title 22, Division 4, Chapter 30 of the California Code of Regulations (CCR), and readopting them in a new Division 4.5. Only the regulations implementing Chapter 6.5 of Division 20 of the Health and Safety Code are being revised. All other regulations found in Title 22, Division 4, Chapter 30 are simply being renumbered.

In revising the current Hazardous Waste Control regulations, the Department used the federal language in 40 CFR Parts 124 and 260 through 271 as a base, eliminated less stringent federal standards, and added more stringent and broader in scope State standards. The consolidation of federal and state hazardous waste regulations made it necessary to restructure some elements of the existing Title 22 regulations in order to conform to the federal format and to establish new locations for state regulations lacking counterparts in the federal program. The regulations have been organized in an understandable fashion which retains the federal structure and numbering system to the greatest extent possible. This format should make the transition from the current dual regulatory system to a single program less cumbersome and should enable the reader to locate a specific regulation with relative ease.

HISTORY OF THIS RULEMAKING:

The Department first made this package available for comment on June 23, 1989 in California Regulatory Register Number 89, 25-Z. Public comment was received by mail and at public hearings held on August 17 in Sacramento and August 19 in Los Angeles. The regulations were modified in response to public comment and were subject, due to the voluminous nature of the changes, to an additional 45 day comment period from December 29, 1989, until February 15, 1990. A third set of modifications was made following the second comment period based on previous comments and staff proofreading and analysis. These changes were subject to public notice for 15 days commencing on 5/4/90 and ending on 5/20/90.

The package was then submitted to the Office of Administrative Law (OAL) on June 22, 1990 for their 30 day review. OAL then disapproved the package on July 22, 1990. The OAL disapproval letter, dated July 30, 1990, set forth 494 specific concerns with the regulations and the rulemaking package.

The regulations were again modified in response to the OAL concerns. Two volumes, dated 1/11/90, were published and made available for a stated comment period commencing on December 21 and ending on January 7, 1991. The comment period was then extended until February 4, 1991 in response to requests from the regulated community for more time to consider the regulations. Two letters requesting this extension are found in the rulemaking file. Two sections were corrected and included as errata in the notification

letter announcing the extended comment period which was sent out postmarked 1/9/91. A third regulation section was then corrected in a second errata sheet postmarked 1/16/91 for inclusion in the 12/22/90 to 2/4/91 comment period.

EXPLANATION OF THIS DOCUMENT:

The manner in which this Statement of Reasons (SOR) has been written to justify the proposed regulation package is different than a typical SOR. Health and Safety Code section section 25159.5 directs the Department to conform to the existing federal regulations. Those regulations are, of course, existing law in California as they are in the entire country. Adoption of the federal language by the State would not create any new regulatory requirements for the regulated community. Thus, the SOR only explains those instances where these regulations differ from the corresponding federal regulation because these are the only instances where the State could be creating new regulatory requirements. This approach is consistent with the Legislative exclusion from the duplication standard of Government Code section 11349.1 set forth in Health and Safety Code section section 25159. This exemption allows the Department to duplicate much of the federal regulation text. In addition, this document contains a checklist explaining where each provision of current Title 22, Division 4, Chapter 30 CCR can be found in the proposed regulations (Title 22 Checklist element) or contains an explanation of why that provision has been repealed and has been readopted somewhere in these proposed regulations (Deleted Title 22 element). Finally, where a provision has been carried over from existing Title 22, the SOR explains why that carryover is necessary but does not attempt to justify the underlying requirement. The necessity for this underlying requirement was demonstrated when these provisions were originally adopted.

RULES OBSERVED IN THIS RULEMAKING:

Several "groundrules" have been observed in assembling this regulation package. These rules governed what material has been included what material has been excluded and what changes have been made to existing law.

1) No unnecessary changes have been made to existing law. These regulations have been written to incorporate the most stringent requirements of existing State and federal law. Because persons managing hazardous waste inside California have always been subject to both State law and federal law, conformance to this ground rule creates no new regulatory requirements; rather it merely consolidates the most stringent standard. This consolidation of requirements of the Department's regulations clarifies the duties of the regulated community by eliminating different and conflicting standards which currently cause considerable confusion to the Department, EPA, and the regulated community. In several

instances, exceptions to this rule were made. In several instances, stricter federal standards have been applied to persons not currently regulated under federal law. New regulations were created in several places to clarify unclear provisions of existing law. Each such exception is identified and justified in this document on a section by section basis.

2) Whenever possible, federal language has been retained and modified if necessary. When no federal language existed, the existing State language has been used whenever possible. Exceptions to this groundrule are pointed out in the detailed explanation on a section by section basis.

INDICATION OF CHANGES IN FINAL TEXT

The final version of the proposed regulation submitted to OAL used various text styles to indicate changes made to the originally proposed text at various stages in the regulatory process. These text styles and their meaning follow:

<u>TEXT STYLE</u>	<u>EXAMPLE</u>	<u>MEANING</u>
Plain text	plain text	Originally proposed language*
Underlined text	<u>example</u>	Language added for the 12/29/89 comment period
Strikeout text	example	Language deleted for the 12/29/89 comment period
ALL CAPITALS	EXAMPLE	Language added for the 5/4/90 comment period
Lined-out text	example	Language deleted for the 5/4/90 comment period
Double underlined	i.e.: <u> </u>	Punctuation added for 5/4/90 comment period outside of added text
Subsection notation	(A)*	Notation added as all capitals; subsection letter is lowercase ie: (A)*=(a)

*NOTE: Because all text is new to the CCR, all text was proposed as all-underline for the initial comment period. For the second comment period, all the originally proposed text was shown as plain text to simplify reading the document.

The post-OAL changes were indicated differently. To clarify the presentation of the text, all text submitted to OAL was shown as plain text. Changes to the text made available for public comment for the December 22, 1990 to February 4, 1991 comment period were

again shown as underline (added text) and strikeout (deleted text). All text is shown as plain text in the version being submitted to OAL for the second OAL review.

"WORKING COPY" DOCUMENT

The proposed regulations were prepared by starting with a copy of the applicable federal regulations and modifying these regulations by deleting and adding text. In order to assist staff preparing the regulations and to assist the regulated community in their review of the first public noticed package, a "working copy" document was prepared and made available along with the proposed text of the regulations during the first public comment period. Following the first comment period, the working copy was abandoned to avoid clarity problems arising from altering two documents in parallel. This "working copy" of the proposed regulations showed deviations from the original federal text as follows:

Deleted federal language appears as strikeout.

Added existing Title 22 language appears as all-caps.

Language new to both the federal regulations and Title 22 appears as underline. Text appearing as underline and strikeout was added during the regulation development cycle and later deleted. This text does not currently exist in State or federal law.

Additions to the federal text added by the Federal Register appear with asterisks in the left margin.

The "working copy" document is included in the rulemaking file and was made available for inspection at the Toxic Substances Control Division, Headquarters and Regional offices, as well as at all State of California depository libraries. Copies were made available to the public during the first comment period at a cost of \$135 to defray the considerable costs of publication but copies were made available free of charge to persons claiming that purchase would be a financial hardship.

CHANGES COMMON TO THE ENTIRE REGULATION PACKAGE:

The organizational terminology of the proposed regulations differs from the federal terminology. The proposed regulations are organized using chapter, article, and section designations consistent with the format of the CCR approved by the California Office of Administrative Law (OAL). (The federal regulations are divided into "Parts", "Subparts" and "Sections" and use different subsection designations) The format of the federal regulations is generally being retained in the proposed state regulations with

State organizational designations being substituted for the federal terminology.

A comparison of the state and federal organization designations is as follows:

<u>Federal</u>	=	<u>State</u>
Part		Chapter
Subpart		Article
Section		Section
(a)		(a)
(1)		(1)
(i), (ii), (iv)		(A)
(A)		1.
		a.

The new regulations which correspond to 40 CFR sections have been renumbered using the 40 CFR section number as the base number preceded by the digits 66 or 67 corresponding to the first two digits of the 66000 and 67000 numbering series allotted for new Division 4.5 by the OAL. The resulting state section number can be directly related to the corresponding federal number. For example: 66260.2 reflects addition of "66" to the 40 CFR section designation, 260.2.

Section numbers for existing State regulations with no federal counterpart are being numbered in two ways:

- 1) Proposed sections addressing an area of regulation where federal regulations exist but no equivalent federal section exists are being given section designations wherein the numbers following the decimal point are larger than those assigned the last federal sections found in that part. For example, in proposed Chapter 11, the last federally-equivalent regulation section is numbered 66261.33 to correspond to 40 CFR section 261.33. The next section in proposed Chapter 11 has no equivalent federal regulation and has been assigned the number "66261.100".
- 2) Proposed regulations addressing areas not regulated by EPA in 40 CFR, typically referred to as California only regulations or non-RCRA regulations, are being placed into chapters with no federal counterpart.

These existing Title 22 CCR regulations are found in chapters 39-45 of the proposed regulations and have been given section numbers in the 67000 series:

Chapter

- 39 Border Zone (section 67390.1, et seq.)
- 40 Minimum Standards...For Management of Hazardous and Extremely Hazardous Wastes (67400.1, et seq.)
- 41 Chemical Toilets (section 67410.1, et seq.)
- 42 Infectious Waste (section 67420.1, et seq.) (deleted for the final comment period)
- 43 Additional Standards...Extremely Hazardous Wastes (67430.1, et seq.)
- 44 Lab Certification (67600, et seq.)
- 45 Transportable Treatment Units (section 66213.2, et seq.)

GENERIC CHANGES:

Consolidation of State and federal hazardous waste regulations resulted in certain changes to words and phrases in the underlying federal regulations. These changes have been consistently applied throughout the regulations to standardize the terminology. The words and phrases affected by this type of change follows:

<u>Federal</u>	<u>Proposed</u>
Federal references	New CCR references
Administrator	Department
Administrator	precede the term with "USEPA"
Agency	Department
Federal reference to a section number	Precede with "40 CFR"
gender specific pronouns	non-gender specific phrases
Regional Administrator	Department
must	shall
"solid waste"	"waste"
Citation of a federal statute	add "federal" in front of citation
Notification requirements of section 3010 of RCRA	Notification requirements of Health and Safety Code section 25153.6
Word "paragraph"	word "subsection"
"treat, store, or dispose"	Addition of "transfer" to "treat, store, or dispose"
Notes and comments	Included in regulation or deleted
"May" (describing Departmental actions)	"shall"

Justification for generic changes:

Federal references to State references: Internal references are being changed from references to 40 CFR to references to the proposed regulations. These reference changes are explained in the detailed statement of reasons for each instance where a reference number change leads to any change in the effect of that reference.

"Administrator" to "Department": In the federal regulations, many actions and authorities are reserved for the EPA Administrator. Many of these actions and authorities will be performed by the

Department. Changing this word in our proposed regulations is necessary to allow the State to establish those authorities and perform those actions.

Precede "Administrator" with "USEPA": Not all authorities and actions of the Administrator referred to in the federal regulations will be performed by the Department. In those cases where the Department is not or cannot perform an action or assume the authority of the Administrator, or where the authority will be jointly held, the word "Administrator" is being retained and preceded by the phrase "USEPA" to clarify the fact that the authority or action referred to is being retained by the EPA Administrator.

"Agency" to "Department": Actions to be taken by the EPA refer to the "Agency". This change is necessary to designate the Department as the state agency which will carry out those actions under the proposed regulations.

Insertion of "40 CFR" before section references: The State is not adopting all provisions of the federal hazardous waste control law. However, reference will be made to some of the non-adopted federal sections in some cases. To clearly identify the sections of law referred to, the Department is adding "40 CFR" before references to that body of federal law.

Gender-specific pronoun to gender-neutral term: Any instance where a gender-specific pronoun exists in the federal regulations, such as "he" or "him", is being replaced by an appropriate gender neutral phrase. For example, "he" might be replaced by "the generator", "the petitioner" or another term as appropriate. This change is not required by law but conforms to the Department's policy for regulations.

"Regional Administrator" to "Department": In the federal regulations, many actions and authorities are carried out by the EPA Regional Administrator. Most of these actions and authorities will be performed or assumed by the Department in the proposed regulations. Thus, changing this term in our proposed regulations is necessary to allow the Department to enforce the regulations.

"Must" to "Shall": The word "must" is being changed to the word "shall" in order to conform to the general usage of this term in the California Code of Regulations.

"Solid waste" to "Waste": The word "waste" is being substituted for the term "solid waste" used in the federal regulations. California law defines "solid waste" in Health and Safety Code section 25148.5 as being exclusive of hazardous waste. Therefore, these regulations cannot use the term "solid waste" as it is in the federal definition. The Legislature has resolved this dilemma by defining "waste" to mean what "solid waste" means in the federal hazardous waste control regulations. Therefore, these regulations

are substituting the State's term, "waste", for the federal term, "solid waste".

Addition of "federal" before citation of federal law: The word "federal" is being placed before citations of federal acts to clarify that the reference is being made to federal rather than State law. For example: The federal Clean Water Act.

Replace "Notification requirements of Section 3010 of RCRA" with "Notification requirements of Health and Safety Code Section 25153.6. This substitution is necessary because that State statute is equivalent to that federal statute.

Replace word "paragraph" with word "subsection": This change conforms the vocabulary of the proposed regulations with the general usage of the California Code of Regulations.

Addition of "transfer" to "treat, store, and/or dispose": Transfer is being added to the phrases "treat, store, and/or dispose of", "treat and/or dispose", and "store" to make it clear that a permit or grant of Interim Status is necessary for all the above listed hazardous waste management activities, in accordance with Health and Safety Code section 25201.

"May" to "Shall". OAL commented that the use of the word "may" to describe actions the Department "may" take is not acceptable because it implies that criteria other than those set forth in regulation are being considered when deciding if the Department will take a specific action or grant a specific variance. The Department has examined each instance where the word "may" appears and is changing all those instances where the OAL comment is germane. This change is necessary to ensure that all criteria for Departmental decisions are set forth in the text of the regulations. In some instances, the Department is setting forth additional criteria when changing may to shall. The necessity for these additional criteria is individually justified in those portions of this document addressing that specific regulation.

DETAILED STATEMENT OF REASONS:

A section-by-section explanation of the proposed regulations follows. As discussed earlier, these explanations explain how, if at all, the federal language used as a base for these regulations was modified.