RESPONSE TO COMMENTS

R-89-017

RCRA AUTHORIZATION REGULATION PACKAGE

Public comments were received from three comment periods ending:

Comment period 1: August 9, 1989
(Includes 8/7/90 and 8/9/90 public hearing transcripts)

Comment period 2: February 15, 1990

Comment period 3: May 20, 1990

The responses to those comments can be found in two binders. The notation used to identify comments and commentors differs for each comment period to allow the reader to distinguish the proposed regulations being commented on. An explanation of the commentor/comment designations used for each comment period precedes the response to comment for that comment period.

Original copies of all comments received and the public hearing transcripts can be found in the rulemaking file. Copies of all comments and the public hearing transcripts annotated with the numbered comments can be found in the green binders labeled "Public Comments".

FIRST PUBLIC COMMENT PERIOD

Proposed regulations R-89-017 were available for public comment for 45 days ending August 9, 1989. The Department received 49 sets of comments.

Commentors in this notice period are identified by the use of capital letters running from A to Z and then from AA to AW in the sequence AA, AB, AC,...AW. Individual comments are identified for each commentor by the use of Arabic numbers. For example:

A24 = 24th comment from commentor A
AH19 = 19th comment from commentor AH

A copy of each transmitted set of comments is found in the binders labeled:

R-89-017 Vol 1 of 4 Public Comments	R-89-017 Vol 2 of 4 Public Comments	R-89-017 Vol 3 of 4 Public Comments

Individual comments, as responded to, are identified in this binder. Original copies of each set of comments can be located in the rulemaking file.

Comment A1 - Section 66260.10

Commentor A - EPA Region IX

Comment: "Under the proposed definition of "Treatment", the term does not include energy recovery, material recovery or reduction in volume. It is suggested that these terms be included in order to make the proposed state definition equivalent to 40 CFR 260.10 (p. 379)."

Response to comment: The Department is accommodating this comment.

Comment A2 - Section 66261.3(a)(2)(C)

Commentor A - EPA Region IX

Comment: "As written, the provision that "...it may be demonstrated that this waste is not a hazardous waste" could be misinterpreted to mean that the waste is not a hazardous waste even if it would be hazardous under one of the other subsections of 66261.3(a)(2). If so interpreted, the provision would be less stringent than the federal program."

Response to comment: The Department agrees that this subsection could be confusing as written. The provision of subsection (a)(2)(C) is being changed to state that

> "(C) It is listed in or contains a constituent listed in Appendix X to this chapter. However, the waste is not a hazardous waste if:
>
> 1. It is determined that the waste does not meet the criteria of subsection (a)(2)(B) of this section, and
>
> 2. It is determined that the waste does not meet the criteria of subsection (a)(2)(A) of this section by:"

The additional references confirm the application of the characteristics and the lists of hazardous waste to the wastes in question. Subsections (a)(2)(C)1. and (a)(2)(C)2. then are consistent with the 40 CFR Section 262.11 and the proposed Section 66262.11 requirement that one apply the lists of hazardous wastes, testing, and "best professional judgement" to determine if a waste is a hazardous waste.

Comment A3 Section 66261.24 (A)(2)(a) Table II, 2nd footnote

Commenter - Environmental Protection Agency

Comment summary: The phrase on lines 3.51 - 3.55 "(and the waste ... pursuant to Section 66261.100)" should not be in parentheses. It is fully a part of the regulatory language and should appear so.

Comment response: The Department considers parenthetical phrases within regulation to be regulatory in nature and enforceable. However, for clarity, the Department revised the regulations to accommodate this comment.

Comment: A4 - Section 66261.2

Commentor A - EPA Region IX

Synopsis of Comment: The state regulations contain two paragraphs designated as (d). The second on (version 9, pg.6, line 4.54) should be changed to (e). This is very important since other regulations refer to section 66261.2(d). However, they do not need to be changed since they refer to the first paragraph (d).

Recommendation: Change 261.2, p.6, line 4.54 to begin with "(e)" rather than "(d)".

Response to comment: The incorrect numbering of this subsection appears only in the working copy document. The proposed text is numbered correctly. The text of the Proposed regulations is identical with the commentor's recommendation.

Comment: A5 - 66260.10

Commentor A - EPA Region IX

Synopsis of Comment: The definition for "By-product" is not in alphabetical order--it should come after "Business concern".

Recommendation: Move definition to appropriate position.

Response to comment: The Department will accommodate this comment. The definition will be moved into proper alphabetical order.

Comment A6 Section 66261.32

Commenter - Environmental Protection Agency

Comment summary: Significant typographical error: K088 (spent potliners from primary aluminum reduction) is misidentified as K068.

Comment response: The listing of K068 was a typographical error. The Department revised the regulations to correctly reflect K088 (spent potliners from primary aluminum reduction).

Comment A7 Section 66261 Appendix VII

Commenter - Environmental Protection Agency

Comment summary: Significant typographical error: K088 (spent potliners from primary aluminum reduction) is misidentified as K068.

Comment response: The listing of K068 was a typographical error. The Department revised the regulations to correctly reflect K088 (spent potliners from primary aluminum reduction).

Comment A8.1 - Section 66262.12

Commentor A - Environmental Protection Agency (EPA)

Comment summary: Typographical error. "Nnumber" should be spelled Number.

Comment response: The comment was accommodated and the word number spelled correctly.

Comment A8.2 - Sections 66262.40

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that U.S. EPA should be referred to consistently as U.S. EPA throughout the section.

Comment response: The generic Statement of Reasons specifies that the phrase "U.S. EPA" was changed to "USEPA" in the proposed regulations.

Comment A9 - Section 66262.10 (h)

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that new language in this proposed subsection which exempts household hazardous waste (HHW) from the regulations contradicts with proposed section 66261.4(b) which sets forth the definition of hazardous waste. The state definition is required to be broader in scope or more stringent and thus states that HHW is not exempt from being classified as a hazardous waste. However, the proposed language was taken from the federal regulation section 262.4 (b)(1) which exempts HHW from being classified as a hazardous waste.

Comment response: The proposed language will be deleted and replaced with language currently in the State regulations which is more stringent. The current language only exempts HHW homeowners from the generator requirements.

Comment A10 - Section 66263.30 (c)(1) & (2), and (d)

Commentor A - EPA Region IX

Comment:
"Regulations can always be amended. Citing the specific amendment date of a referenced regulation will necessitate amending this section when cited regulations are amended. This language is not in the CFR subsections. RECOMMENDATION: Either 1) Delete reference to amendments or 2) Just say 'as amended'."

Response: Government Code Section 11346.7 (d) of the Administrative Procedure Act (APA) requires that when a state agency adopts a federal-mandated regulation a citation to where an explanation of the provisions of the regulation can be found shall be included in the proposed adoption. The Office of Administrative Law requires that the specific reference citation be given so that the regulated community can adequately locate the specific regulation being cited. To simply leave a statement of "as amended" would only leave a "moving target" for the regulated community to find a specific standard or regulation. Therefore, because of APA requirements the amended dates for each of the references to 49 CFR cannot be removed.

Comment A11 - Section 66262.11 (b)(1) and (b)(2)

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that these two subsections which set forth the requirements for determining whether a waste is hazardous are not equivalent to the federal requirement set forth in the Resource Conservation and Recovery Act (RCRA). The

commentor recommends language for section 66262.11 (b) which will remove federally regulated hazardous wastes (RCRA wastes) from application of these proposed subsections.

Comment response: The comment was accommodated. The recommended language has been added to the proposed regulations.

Comment A12 - Section 66262.70
A13 - Section 66262.10(d)
A28 - Section 66262.10(d)

Commentor A- Environmental Protection Agency

Comment summary: The commentor states that the cross reference in this section to Chapter 18 is not correct or at least not covered in the Statement of Reasons. The commentor states that referencing Chapter 18 gives the farmer even greater exclusion from the regulations than allowed in 40 CFR section 262.70.

Comment response: The Department disagrees with this comment. This rulemaking is intended to conform state and federal hazardous waste regulations. The reference to Chapter 18 in Section 66262.70 is consistent with the change to 40 CFR Section 262.70 and 262.10(d) published in the Federal Register, Volume 53, Number 138, July 19, 1988.

Comment A14 - Section 66262.12 (b)

Commentor A - Environmental Protection Agency

Comment summary, A14.1: The commentor states that this section, which sets forth how a generator will obtain an identification number, is misleading. It implies that whichever agency (EPA or DHS) the generator sends the form to will be the agency that assigns the identification number.

Comment response to A14.1: The comment was accommodated. The second sentence has been changed to read "Following receipt of the request, the generator will be assigned an identification number."

Comment summary, A14.2: The commentor states that the definition of "Identification Number" should be changed. Federal facilities should have an identification number with a two letter prefix and ten numbers.

Comment summary, A14.2: The comment was accommodated. The definition has been changed to reflect that the federal facilities will have an identification number with a two letter prefix and ten numbers.

Comment A15 - Section 66262.20 (a)

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that the Environmental Protection Agency's Continuation Form is not properly identified in the proposed regulations.

Comment response: This comment was accommodated: the continuation form is being identified as the "EPA Continuation form (8700-22A)."

Comment A16 - Section 66262.21 (b) & (c)

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that by adopting this section, which states that generators are to use the California manifest, the Department assumes that all generators are located in California. However, the section implies that non-California generators transporting their waste through California would have to use a California manifest. The commentor suggests language be added that would clarify that this section and pertains to California generators of hazardous waste.

Comment response: The comment was accommodated. Language was added to Section 66262.10, the introductory section for Chapter 12, which states that the chapter applies to generators located in California.

Comment A17 - Section 66262.41 (a)

Commentor A - Environmental Protection Agency (EPA)

Comment summary, A17.1: The commentor states that in replacing "EPA form 8700-13A" with "forms provided by the Department" in the regulations covering the Biennial Report and Annual Report (sections 66264.75 and 66265.75), the Department has not made it clear that the forms will include all categories of information required in the EPA Biennial Report.

Comment response, A17.1: The Statement of Reasons for both the Biennial and Annual Reports states that the "forms provided by the Department" will include all requirements of the EPA Biennial Report. Furthermore, the State regulations that deal with the information required in the Biennial and Annual Reports are identical to the corresponding federal regulations. In addition, language is being added to the proposed sections for the Biennial and Annual reports which states that the Department shall ask for additional information as required by the Environmental Protection Agency.

Comment summary, A17.1(a): The commentor provides a checklist which shows specific items of information that the commentor claims are not included in the report forms.

Comment response, A17.1(a): The Department disagrees with the commentor as to this item. The items on the commentor's checklist are addressed individually for the appropriate report forms below.

Responses to checklist items (Manifest Review Checklist attached to Comment A17):

Comment summary, Checklist item Number 3: "The EPA identification number, name and address for each off-site treatment storage or disposal (TSD) facility to which hazardous waste was shipped during the year."

Comment Response, Checklist item Number 3: This item is included in section 66262.41 (a)(3) for the Biennial report and sections 66264.75 (c) and 66265.75 (c) for the Annual report. The Department will consult with EPA on the design of the forms to ensure that all information required by federal law will be collected by the Department.

Comment summary, Checklist item Number 4: "The name and EPA identification number of each transporter used during the year to ship to a U.S. treatment, storage, or disposal (TSD) facility."

Comment Response, Checklist item Number 4: This item is included in section 66262.41 (a) (4) for the Biennial report. The Department will consult with EPA on the design of the forms to enusre that all information required by federal law will be collected by the Department.

Comment summary, Checklist item Number 5: "Description, EPA hazardous waste number, Department of Transportation hazard class and quantity of each hazardous waste shipped off-site to a U.S. treatment, storage, or disposal (TSD) facility." The commentor states that this item was in the proposed regulations, however, the Department of Transportation hazard class was not specifically requested.

Comment response, Checklist item Number 4: The Department of Transportation hazard class is included included in section 66262.41 (a)(5) for the Biennial report and sections 66264.75 (d) and 66265.75 (d) for the Annual report. The Department will consult with EPA on the design of the forms to ensure that all information required by federal law will be collected by the Department.

Comment summary, Checklist item Number 5: "Was this information listed by EPA identification number of each off-site U.S.

treatment, storage, or disposal (TSD) facility to which hazardous waste was shipped?"

Comment response, Checklist item Number 5: This item is included in section 66262.41 (a)(5) for the Biennial report. The Department will consult with EPA on the design of the forms to ensure that all information required by federal law will be collected by the Department.

Comment summary, Checklist item Number 6: "A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated" was not specifically requested; and

Comment summary, Checklist item Number 7: "A description of the changes in volume and toxicity actually achieved during the year in comparison to previous years (back to 1984 if available)?" The commentor states that these items are in the proposed regulations, however, the actual forms provide multiple choice answers and do not ask for a description or discussion.

Comment response, Checklist items Number 6 and 7: The regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law. As the language quoted above demonstrates, the list requires a "description," but says nothing about discussion. Further, a multiple choice format is not incompatible with a request for descriptions and is used in the format that is used in the waste minimization part of the federal Hazardous Waste report. The Department will consult with EPA on the design of the forms to ensure that all information required by federal law will be collected by the Department.

Comment summary, A17.2: The commentor states that the word "transfer" is not added consistently throughout this section.

Comment response, A17.2: The comment was accommodated. The word "transfer" will be added consistently throughout the section.

Comment A18 - Section 66262.50

Commentor A - EPA Region IX

Comment: "EPA acknowledges the rationale given in the Statement of Reasons for deleting both the last sentence of 40 CFR 262.50 (which references 262.58), and 262.58 (Reserved section on International Agreements). However, the deletion alone does not address the contingency that, when and if the United States does enter into international agreements that establish different requirements for exports of hazardous waste than those set forth in Article 5, the requirements of those agreements will supersede the Article 5

requirements with respect to exports from California to the affected countries.

RECOMMENDATION: Add language to 66262.50 to clarify the situation pointed out above."

Response: Section 66262.50 adopts into regulations the provision that the requirements of 40 CFR Section 262.58 will supersede the requirements of this article. The second sentence of Section 66262.50 begins, "Except to the extent 40 CFR Section 262.58 provides otherwise,..." This language clearly recognizes that an international agreement supersedes the requirements established by this article.

Comment A-19 - Section 66262.53 (b)

Commentor A - EPA Region IX

Comment:
"The original CFR language requires that notification 'shall' be sent to EPA. In adding in the provision for concurrent notification of EPA and the Department, the addition language states that a copy of the notification "will" be sent to the Department. 'Will' can be construed to connote a greater degree of violation than 'shall', which is unambiguously mandatory.
RECOMMENDATION: Change 'will' to 'shall'".

Response: The subject portion of this subsection has been changed to accommodate this comment.

Comment A-20 - Section 66262.53 (c)

Commentor A - EPA Region IX

Comment:
"the ninth word of the first sentence of this section refers to 'paragraph (a) (1)', whereas several other times throughout this section, the word 'paragraph' has been changed to 'subsection'.
RECOMMENDATION: To be consistent, change to 'subsection (a) (1).'"

Response: The subject portion of this subsection has been changed to accommodate this comment.

Comment A-21 - Section 66262.53 (e)

Commentor A - EPA Region IX

Comment:
"66262.53 (e) has added three references to 40 CFR sections. This is problematic because each of the sections referred to is being incorporated into the California regulations, which will become enforceable in lieu of the corresponding CFR provisions once California is authorized. However, EPA assumes that the added CFR references in 66262.53 (e) are intended to address the fact that EPA will retain the authority to determine whether the submitted notification is satisfactory. RECOMMENDATION: Delete references to CFR sections and substitute the following suggested changes to the second and third sentences of 66262.53 (e): 'A notification is complete when EPA receives a notification which EPA determines <u>is satisfactory</u>. Where a claim of confidentiality is asserted with respect to any notification information, EPA may find the notification not complete until any such claim is resolved.'"

Response: This subsection has been amended by deleting the references to 40 CFR (federal citation) and by adding the corresponding references of this article (state equivalent citations). For example, <u>40 CFR Section 262.53 (a)</u> has been changed to <u>Section 66262.53 (a)</u>. The regulation contained in Section 66262.53 (a) of this chapter is equivalent to the corresponding federal regulation contained in 40 CFR Section 262.53 (a). Therefore, subsequent to State authorization a complete listing of notification requirements will be maintained.

The commentor's suggested language regarding claims of confidentiality has not been added because his language does not contain any standards which the regulated community can use to satisfy the criteria for complete notifications of export activity. The reference has been changed as described above and now reads Section 66260.2. The requirements of Section 66260.2 are equivalent to requirements of 40 CFR Section 260.2, therefore the appropriate standards concerning claims of confidentiality will be maintained subsequent to authorization.

Comment A-22 - Section 66262.54 (e)

Commentor A - EPA Region IX

Comment:
"(Manifesting HW to be Exported) The changes in this section imply that regardless of where the waste if generated, it must be manifested through California on a California Uniform Hazardous Waste Manifest. Since this section addresses manifesting HW to be exported out of the United States, this implication is even stronger than in Section 66262.21 (See also Comment to 66262.21 (b) & (c).) RECOMMENDATION: Either : 1) Add to Section 66262.10 that this Chapter applies to generators located in California or 2)

Reinstate some of the CFR language (distinguish between 'the state in which the generator is located' when it is and is not in California)."

Response: The subject portion of Section 66262.10 (a) has been changed to accommodate this comment. In addition, Section 66262.50 clearly states that these regulations only apply to exports from the State of California to a foreign country. The Department does not intend for these specific regulations to apply to shipments through the State.

Comment A-23 - Section 66262.54 (i)

Commentor A - EPA Region IX

Comment:
"Line 2.40: Reference should be Section 66263.20 (j)(4). RECOMMENDATION: Change 'i' to 'j'."

Response: The subject portion of this subsection has been changed to accommodate this comment.

Comment A-24 - Section 66262.56 (a) (4)

Commentor A - EPA Region IX

Comment:
"Comma (Line 1.56) is in the wrong place because the parenthetical refers to Articles 3 and 4. RECOMMENDATION: Delete comma after 'applicable' (Line 1.56) and add comma after 'Article 3 and 4)' (Line 1.58) and change US EPA ID number to Identification Number for consistency (Line 1.59)."

Response: The subject portions of this subsection have been changed to accommodate this comment.

Comment A-25 - Section 66262.56 (b)

Commentor A - EPA Region IX

Comment:
"The addition of 'Copies of the reports shall be sent to the Department.' is unclear regarding how many copies of each annual report shall be sent to the Department. RECOMMENDATION: Specify that number of copies of the annual report that shall be sent to the Department."

Response: The subject portion of this subsection has been changed to accommodate this comment.

Comment A-26 - Section 66262.60 (c)

Commentor A - EPA Region IX

Comment:
"The requirement that importers of HW manifest their HW on a manifest form from the Department implies that the importer is required to use the California Uniform Hazardous Waste Manifest to import his waste, even if it is only being imported from another country to the United States and transported through California to another destination in the United States. Since this passage does not specify what form the Department will provide to the importer and the Statement of Reasons indicates that the changes in this section were made for consistency with existing California regulations, we assume the Department does not intend to provide to importers manifests other than the California Uniform Hazardous Waste Manifest. (See also Comment to 66262.21 (b) & (c).) RECOMMENDATION: Either (1) Specify that use of the **California Uniform Hazardous Waste Manifest** (provided by the Department) applies to an entity importing HW to California from a foreign country, or (2) Reinstate some of the CFR language and/or add other language to distinguish between when California is the ultimate consignment state, and when the waste will be imported **through** California to another state."

Response:
The regulation contained in subsection (a) of this section has been amended to state that this article only applies to imports of hazardous wastes from foreign countries to designated facilities located within the state. The Department feels that coupled with the change to subsection (a) (and parallel change to Section 66262.10), the "manifest form" referred to in subsection (c) clearly refers to the California Uniform Hazardous Waste Manifest.

Comment A-27 - Section 66262.60 (b) (2)

Commentor A - EPA Region IX

Comment:
"The deletion of 'his" is incorrect since there is no previous referral to 'agent' and 40 CFR Section 262.60(b)(2) clearly intends the agent to be the importer's agent. RECOMMENDATION: Either : 1) leave 'his' (Line 1.60) or 2) Change 'his' to 'the importer's agent'."

Response: The commentor's second suggestion has been taken and the subject portion of this subsection has been changed to accommodate this comment.

Comment A28 - Section 66262.70
A12 - Section 66262.10 (d)
A13 - Section 66262.10 (d)

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that the cross reference in this section to Chapter 18 is not correct or at least not covered in the Statement of Reasons. The commentor states that referencing Chapter 18 gives the farmer even greater exclusion from the regulations than allowed in 40 CFR section 262.70.

Comment response: The Department disagrees with this comment. This rulemaking is intended to conform state and federal hazardous waste regulations. The reference to Chapter 18 in Section 66262.70 is consistent with the change to 40 CFR Section 262.70 and 262.10(d) published in the Federal Register, Volume 53, Number 138, July 19, 1988.

Comment A29 - Section 66262 Appendix

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that the California Uniform Hazardous Waste manifest is not shown in the appendix, therefore, it cannot be determined if the "Burden Box Statement" is included on the California manifest.

Comment response: The Department has added the "Burden Box Statement" and the associated language to section 66262.20 (e) to correspond with the federal requirement found in 40 CFR section 262.20. In addition, the California manifest has a seventh page which includes the "Burden Box Statement" language to comply with this requirement.

Comment A30 - Section 66263.10 (c) (1)

Commentor A - EPA Region IX

Comment:
"Changes made to the CFR section have left some ambiguity in 66263.10 (c)(1). Does the Department intend this section to apply to transporters who transport hazardous waste into California from outside of the United States (as "from abroad" implies, but somewhat ambiguously)? Or does the Department also intend this section to apply to transporters who transport hazardous waste into California from other states in the United States. This is a clarification issue, but not a stringency issue.

RECOMMENDATION: Add language to make clear the Department's intent.

Response: This subsection is based on existing federal regulation (40 CFR Section 262.30 (c)(1)) and is only intended to address the importation of hazardous waste into the State from a foreign country (as the word "abroad", meaning "from outside one's own country" implies). Domestic shipments of hazardous wastes into the State are addressed in subsection (a) of this section which established the applicability of this chapter to shipments "within, or into or out of the State" but not to shipments through the State. Language in subsection (c)(1) has been changed to clarify that this subsection applies to only imported shipments of hazardous wastes from foreign countries, as "outside the United States" specifies.

Comment A31 - Section 66263.20 (d)

Commentor A - EPA Region IX

Comment:
"The use of 'a transporter' and 'their' referring to the same entity is incorrect. RECOMMENDATION: Replace 'their' with 'his', or else be gender-neutral throughout the regulations."

Response: The subject portion of this subsection has been changed to accommodate this comment.

Comment A-32 - Section 66263.22 (c)

Commentor A - EPA Region IX

Comment:
"The CFR subsection applies to all shipments of hazardous waste by rail within the United States. The first sentence in 66263.22 has added language that limits the application of this subsection to shipments '<u>originating within</u>' the state. [emphasis added] Subsection (c) further distinguishes between initial, intermediate and final rail transporters. This implies that, if a shipment originates <u>outside</u> of California, even if the final transporter transports the waste solely <u>within</u> California, that transporter is not subject to the recordkeeping requirements of 66263.22 (c).

In contrast, the manifest requirements for rail transporters set forth in 66263.20 (i) -- which describe manifest procedures for initial, next (intermediate), and last rail transporters -- are <u>not</u> limited only to shipments originating within California. RECOMMENDATION: Delete 'originating', or otherwise clarify the Department's intent."

Response: The subject portion of this subsection has been changed to accommodate this comment.

Comment A-33 - Section 66263.30 (b)

Commentor A - EPA Region IX

Comment:
"The CFR subsection allows a government official -- federal, state, or local -- to authorize the immediate removal of hazardous waste discharged during transportation, as the official determines is necessary to protect human health or the environment. However, 66263.30 (b) has deleted federal officials, which implies that a federal government official would no longer have that authority. RECOMMENDATION: Retain the CFR reference to federal officials."

Response: The subject portion of this subsection has been changed to accommodate this comment to include federal agency officials' authorization in an immediate removal situation.

Comment A34 - Section 66264.14 (a)

Commentor A - Environmental Protection Agency

Comment summary: Proposed Section 66264.14 (a) (2) took out comment which explains that demonstration referred to in (a) must be done at time of submittal of Part B of the permit application.

Recommendation: After the phrase in proposed Section 66264.14 (a), "unless the owner or operator can demonstrate to the Department," add the phrase "as required in 66270.14 (b) of this chapter."

Comment response: This comment has been accommodated. The recommended phrase has been incorporated at the end of Section 66264.14 (a), except that the words "this chapter" have been modified to "Chapter 20" which is the correct reference. Also to specifically identify the relevant subdivision that is cross referenced, the Department has added subdivision (4). (The proposed phrase now reads "as required in section 66270.14 (b) (4) of Chapter 20".)

Comment A35 - Sections 66264.73 (b) (6) and 66265.73 (b) (6)

Commentor A - Environmental Protection Agency

Comment summary A35.1: The commentor states that reference to sections 66264.191 [assessment of existing tank system and integrity],66264.193 [containment and detection of releases], and 66264.195 [inspection] in the proposed regulations for permitted facilities should be deleted.

Comment response, A35.1: See Comment A44

Comment summary A35.2: The commentor states that the proposed regulations for facilities with an interim status document (ISD) in section 66265.73 (b)(6) should contain a reference to the sections 66265.191 [assessment of existing tank system and integrity], 66265.193 [containment and detection of releases], and 66265.195 [inspection].

Comment response, A35.2: See Comment A49.1

Comment: A36 - Section 66261.3

Commentor A- EPA Region IX

Synopsis of Comment: Typo - 66261.3(f) precedes (b) in the proposed regs. (66261.3 page 4).

Recommendation; Relocate to 66261.3 page 6, after (e).

Response to comment: This subsection is actually subsection (a)(2)(F). The small "f" is being changed to a capital "F". The change as suggested by the commentor would be incorrect.

Comment A37 - Section 66262.11

Commentor A - Environmental Protection Agency

Comment summary: Typographical error. Page heading for pages 1 and 2 should read 66262.11 not 262.11.

Comment response: This comment has been accommodated with the change made as proposed.

Comment A38 - Section 66264.15-70 (All)

Commentor A - EPA Region IX

Comment: "Proposed regulations reproduced entirely out of sequence.

RECCOMMEND: Put regs in proper sequence."

Response to comment: The Department apologizes for errors introduced in the order of the pages during printing of the regulations. These errors made the regulations more difficult to review; however, all pages were accurately reproduced and available for review and comment as evidenced by multiple comments on the substance of these regulations. All pages will, of course, be placed in proper order before any subsequent printings and retained in proper order as much as can be controlled by the Department.

Comment A39 - Sections 66264.31, 66265.31, 66264.56, 66265.56

Commentor A - Environmental Protection Agency

Comment smmary: Define "release" in Section 66260.10

Comment response: This comment was accommodated. The term "release" has been defined in Section 66260.10.

Comment A40 - Section 66264.35

Commentor A - Environmental Protection Agency

Comment summary: The commentor recommends amending Section 66264.35 to read "...**was** demonstrated **per 66270.14 (b) (6)...**" to include waiver justification of Section 66270.14 (b) (6) as a Part B element

Comment response: This comment was accommodated and suggested language change incorporated in Section 66264.35.

Comment A41 - Section 66264.52 (b)

Commentor A - Environmental Protection Agency

Comment summary: Line 3 uses "Title 40 CFR" twice. Remove two uses of "Title" before 40 CFR to conform with 66265.52 (b) and formats in SOR.

Comment response: Suggested correction has been made. Thanks.

Comment A42 - Sections 66264.56 (d) (2) & 66265.56 (d) (2)

Commentor A - Environmental Protection Agency

Comment summary: Current Office of Emergency Services phone number be maintained in contingency plan contents.

Comment response: This comment was not accommodated. Proposed Sections 66264.52 (c) and 66265.52 (c) of the "contents of contingency plan" and Sections 66264.37 and 66265.37 require the facilities to make arrangements with the State and local emergency services and other appropriate agencies. As already discussed with EPA staff that the Department has no control over the phone company's allocation of phone numbers, and would have to amend the laws any time phone service changed, we believe that the information required pursuant to above referenced sections is adequate to contact emergency services in event of any emergency.

Comment A43 - Section 66264.73 (b) (2)

Commenter A - Environment Protection Agency

Comment summary - The commentor states that the word "must" should be changed to the word "shall" to conform with the statement of reasons for the proposed regulations.

Comment response: The Department has accommodated the comment by replacing the word "must" with the word "shall" because this is one of the generic changes described in the initial Statement of Reasons.

Comment A44 - Section 66264.73 (b) (6)

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that reference to sections 66264.191 [assessment of existing tank system and integrity],66264.193 [containment and detection of releases], and 66264.195 [inspection] in the proposed regulations for permitted facilities should be deleted.

Comment response: The Department has accommodated this comment by deleting the reference to sections 66264.191, 66264.193, and 66264.195 from the proposed regulations because they were included in error.

Comment A45 - Section 66264.73 (b)(13)

Commentor A - Environmental Protection Agency

Comment summary: This commentor states that the word "section" should be inserted before the reference to 66268.8.

Comment response: The comment was accommodated and the word "section" inserted before 66268.8.

Comment A46 - Section 66264.74(a)

Commentor A - Environmental Protection Agency (EPA)

Comment summary: The commentor states that the phrase "USEPA" should be inserted before the word "Administrator" to conform with the format in the Statement of Reasons.

Comment response: The Department has accommodated this comment by inserting the recommended language.

Comment A47 - Section 66265.35

Commentor A - Environmental Protection Agency

Comment summary: Use of "...can be demonstrated..." conforms to 40 CFR but not to some other sections of Article 3 in proposed regulations.

Comment response: This comment was not accommodated. Existing Title 22 CCR makes use of both phrases "...can be demonstrated ..." and "...unless the Department has ruled ...". Current Title 22 CCR Section 67124, which corresponds to the proposed Section 66265.35 uses the phrase "...can be demonstrated...". Therefore, to conform with the current Title 22 language, this phrase has been retained in the proposed section.

Comment A48 - Section 66265.73 (b)(5)

Commentor A - Environmental Protection Agency

Comment Summary: The commentor states that the word "section" was omitted before the reference to 66265.15.

Comment response: The Department has accommodated this comment by inserting the recommended language.

Comment A49 - Section 66265.73 (b) (6)

Commentor A - Environmental Protection Agency

Comment summary, A49.1: The commentor states that the proposed regulations for facilities with an interim status document (ISD) in section 66265.73 (b)(6) should contain a reference to the sections 66265.191 [assessment of existing tank system and integrity], 66265.193 [containment and detection of releases], and 66265.195 [inspection].

Comment response, A49.1: The Department has accommodated this comment by adding the references to sections 66265.191, 66265.193, and 66265.195 to the proposed regulations because they are in the federal regulations 40 CFR.

Comment summary, A49.2: The commentor states that the reference to section 66265.276 (proposed regulations for facilities with an ISD) should be deleted. This reference pertains to land farmed food crops at facilities that have an ISD. The current proposed regulations ban land farmed food crops from being grown facilities that have an ISD.

Comment response, A49.2: The Department has accommodated this comment by deleting the reference to section 66265.276 from the proposed regulations.

Comment A50 - Section 66265.73 (b) (7) through (b) (15)

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that language from 40 CFR section 264.73 (b)(7) and proposed section 66264.73 (b)(7) was inserted into proposed section 66265.73 (b)(7); and that while this makes the two articles agree, it skews the remaining parts of section 66265.73 (b)(8-15) one number too high compared to the 40 CFR section 265.73 (b)(7-14). The Statement of Reasons states that the federal numbering system should be retained where possible.

Comment response: The proposed section 66265.73 (b)(7) was inserted from current State regulations not from 40 CFR section 264.73 (b)(7) or the proposed section 66264.73 (b)(7). The Department has accommodated this comment by relocating the proposed section 66265.73 (b)(7) to form new 66265.73 (b)(15). This retains the federal numbering system.

Comment A51 - Section 66265.74 (a)

Commentor A - Environmental Protection Agency

Comment summary: The commentor states that the word "of" should be inserted before the word "EPA," and the phrase "USEPA" inserted before the word "Administrator," and the word "of" deleted before the words "...the Department" to conform with the format in the Statement of Reasons.

Comment response: The Department has accommodated this comment by inserting the recommended language.

Comment A52 - Section 66265.74 (b)

Commentor A - Environmental Protection Agency (EPA)

Comment summary: The commentor states that "by the Department or the USEPA" should be inserted before "Administrator" to conform with formats in the Statement of Reasons.

Comment response: The Department has accommodated this comment by inserting the recommended language.

Comment A53(a), (b), (c), and (f) - Chapter 14, Article 6

Commentor A - Environmental Protection Agency Region IX

Comment Summary: These comments identify four typographical errors and suggest corrections.

Comment response: The typographical errors identified in these comments have been corrected.

Comment A53(d) - Section 66264.97(e)(7)

Commentor A - Environmental Protection Agency Region IX

Comment: Replace the word "quantification" with the word "quantitation" where it appears in these paragraphs.

Comment response: This change has been made to the proposed regulation as suggested. Further, the last sentence of section 66264.97(e)(7) has been modified as follows: " ~~Where practical quantification limits are used in any of the following statistical methods to comply with subsection (e)(9)(E) of this section,~~ The owner or operator shall demonstrate that use of the proposed statistical methods will be protective of human health and the environment and will comply with the performance standards outlined in subsection (e)(9) of this section." This change was necessary to emphasize the responsibility of the owner or operator to provide sound technical justification for the use of each proposed statistical method, whether or not the method employs practical quantitation limits.

Comment A53(e) - Section 66264.97(e)(9)(E)

Commentor A - Environmental Protection Agency Region IX

Comment: Replace the word "quantification" with the word "quantitation" where it appears in this paragraph.

Comment response: This change has been made to the proposed regulation as suggested.

Comment A54(a) - Section 66260.10

Commentor A - Environmental Protection Agency Region IX

Comment Summary: This comment identifies an error in the definition of "solid waste management unit". Since the term "solid waste" has been replaced with the word "waste" in the proposed

regulations, the phrase "management of solid wastes" should be replaced with the phrase "management of waste".

Comment response: The phrase "management of solid waste" has been replaced with the phrase "management of waste" as suggested.

Comment A54(b) - Section 66264.90(a)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, this paragraph should identify which types of releases the owner/operator must respond to. The end of the second sentence should read '...responding to releases of hazardous constituents from regulated units to the ground water, surface water, or the unsaturated zone.'"

Comment response: The end of the second sentence has been amended as follows: "... responding to releases ~~from regulated units~~ to ground water, surface water, or the unsaturated zone." The phrase "of hazardous constituents" was omitted because, in California, an owner or operator must respond to all releases from a regulated unit, not only releases of hazardous constituents.

Comment A54(c) - Section 66264.91(a)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, this paragraph should identify in what instances the owner/operator must conduct monitoring and response programs: 'for ground water, surface water, and the unsaturated zone' should be added after 'for each regulated unit'."

Comment response: This change has not been incorporated into the proposed regulations because it would give the wrong impression that a separate monitoring program is required for each medium. In the proposed regulations the word program has been used to refer to all water quality monitoring activities involved in either detecting a release, evaluating a release, or performing corrective action.

Comment A54(d) - Section 66264.91(a)(4)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, this paragraph should better identify which permit modification is meant: '... a permit modification for corrective action submitted... pursuant to Section 66264.99(d) of this article.'"

Comment response: This change has been made to the proposed regulation as suggested.

Comment A54(e) - Section 66264.92

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency, replace 'determine whether' with 'ensure that' and replace 'exceed' with 'do not exceed' in the first sentence. Subpart F uses 'ensure that,' and Title 22 ground water regulations retain this wording in other sections (such as 66264.100(b)). The stronger phrase 'ensure that' is preferable in 66264.92, as elsewhere in Title 22.

Comment response: The changes suggested in this comment have not been incorporated into the proposed regulations because, for the sake of clarity, the first sentence in Section 66264.92 has been eliminated. Review of this requirement showed it to be redundant because the owner or operator must comply with <u>all</u> conditions in the facility permit, not just the conditions that were described in the first sentence.

Comment: A54.1 - 66260.10

Commentor A -EPA Region IX

Synopsis of Comment: For consistency, in the definition of "solid waste management unit," replace "management of solid wastes" with "management of wastes." The term "solid waste" is not defined in 66260.10, and is replaced with the term "waste" throughout 66261.2.

Response to comment: The Department will accommodate this comment. The Department agrees that the suggested change is consistent with the Department's use of the term "waste" in place of the federal term "solid waste"

Comment A55(a) - Section 66264.92

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, this paragraph should identify in what instances the Department shall establish the water quality protection standard in the facility permit: 'for ground water, surface water, and the unsaturated zone' should be added to the last sentence."

Comment response: In response to this, and other comments, this section has been completely rewritten for the sake of clarity. The language suggested in this comment was not added to the rewritten

section because it seemed to obscure, rather than clarify, the meaning of the rewritten section.

Comment A55(b) - Section 66264.94(c)(1),(c)(2),(c)(3), and (c)(4)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, these paragraphs should use the term 'concentration limit greater than background' instead of 'concentration limit'. Without this correction, the paragraphs could require the concentration limit for the water quality protection standard to be set below the background value. This does not seem to be the intent of the paragraphs."

Comment response: As suggested, the phase "concentration limit" has been replaced with the phrase "concentration limit greater than background" as appropriate throughout these sections. Note : For the sake of clarity, this subsection has been rewritten and reorganized. The new section numbers are 66264.94(c), (e)(1), (e)(2), and (d).

Comment A55(c) - Section 66264.94(c)(4)(B)1.

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with Section 264.94(b)(1)(i), the mention of 'potential for migration' should not be deleted from the list of items which the Department must consider in establishing a concentration limit greater than background. In the Statement of Reasons, the Department suggests that the item be deleted to preclude the consideration of low mobility in establishing concentration limits. However, it is desirable that considerations of high mobility affect the decision-making process as well. For clarity in organization of Section 66264.94(c) (4) (B), the potential for migration should be listed as a separately numbered item (e.g., item (c)(4)(B)10.)."

Comment response : This change has not been made to the proposed regulations because the Department and the State Water Quality Control Board both believe that this language implies that the Department will be more likely to establish a concentration limit greater than background if the owner or operator can demonstrate that the constituent has a low potential for migration. Since the the transport of constituents in the subsurface is so poorly understood, and the assumptions used in predictive modeling of contaminant transport are difficult or impossible to defend, the Department does not wish to invite extensive argument from the regulated community on issues that cannot be resolved.

Comment A56(a) - Section 66264.94(c)(7) and (c)(8)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, these two paragraphs should be removed from section 66264.94(c), and be renumbered 66264.94(d) and 66264.94(e). This reorganization enhances clarity because the two paragraphs are not requirements which must be satisfied when the Department establishes concentration limits greater than background, as is stated in 66264.94(c). Instead, the paragraphs identify additional restrictions which apply to such concentration limits after they have been established under 66264.94(c). (The new 66264.94(d) should then end in '.' instead of '; and' and 66264.94(c)(5) should end in '; and'.)"

Comment response: This section has been entirely reorganized to enhance clarity.

Comment A56(b) - Section 66264.94(c)(8):

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, the first sentence should begin 'When an owner or operator is conducting a detection monitoring program after a corrective action program has been terminated... ' For consistency, the term 'value' should be replaced with 'concentration' in the second sentence. For clarity, 'in the ground water, surface water, or unsaturated zone' should be added after 'constituent of concern' in the second sentence. "

Comment response: This section has been modified as suggested. Note : The subsection referenced in this comment has been moved and renumbered as Section 66264.94(h).

Comment A56(c) - Deletion of 264.94(c)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with Subpart F, mention of underground sources of drinking water as identified by the Federal UIC Program (see Section 264.94(c) of Subpart F) should not be deleted from Title 22 regulations. It is difficult to determine whether the UIC Program would be consistent with the criteria listed in Section 66264.94(C)(4)(B) of Title 22 in identifying underground sources or drinking water, or whether the UIC Program would designate certain aquifers underground sources of drinking water which the Department would not view as such. If any aquifer is designated an underground source of drinking water by the UIC Program, the Department must consider this designation in establishing concentration limits greater than background, whether or not the Department agrees with

the designation. (Note that Section 264.94(c) refers to Section 144.8 in error. The correct reference is 144.7.)"

Comment response : This change has been made to the proposed regulation as suggested (See Section 66264.94(i)).

Comment A57(a) - Section 66264.95(b)(2)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, it should be stated that the requirements in this paragraph only apply where technically feasible. Since the water quality program for each unit must enable the earliest possible detection of a release from that regulated unit, the majority of facilities will be required to set the point of compliance around the perimeter or each regulated unit, even if the units are contiguous. In existing facilities, it is likely that contiguous units are situated so close together that it would be impossible to place a monitoring well between them without compromising the integrity of the units (e.g., damaging liners or threatening the stability of berms). In order to prevent confusion in implementing the requirements of 66264.95(b)(2), a qualifying phrase, such as 'where placement or wells at the point of compliance will not compromise the integrity of the regulated units,' should be added to this paragraph."

Comment response: This suggestion has been incorporated into the proposed regulations for existing units as follows: "(2) If the facility contains contiguous regulated units, <u>and monitoring along a shared boundary would impair the integrity of a containment or structural feature of any of the units,</u> the waste management area may be described by an imaginary line along the outer boundary of the contiguous regulated units ~~if the water quality monitoring program for each unit will enable the earliest possible detection of a release from that regulated unit~~. <u>This provision only applies to contiguous regulated units that have operated, or have received all permits necessary for construction and operation, before the effective date of this article.</u>"

Comment A57(b) - Section 66264.95(b)(2)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, '.. .if the water quality monitoring program.. .' should be replaced by '.. .only if the water quality monitoring program... ' or the entire phrase 'if the water quality monitoring program for each unit will enable the earliest possible detection of a release from that regulated unit' should be deleted."

Comment response: The phrase 'if the water quality monitoring program for each unit will enable the earliest possible detection of a release from that regulated unit' has been deleted as suggested.

Comment A57(c) - Section 66264.97(b)(1)(B)3.

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with (b)(1)(C)2. and (b)(1)(D)2., 'additional aquifers' should be changed to 'other aquifers'."

Comment response : This change has been made to the proposed regulation as suggested.

Comment A57(d) - Section 66264.97(e)(9)(B)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, the first sentence of this paragraph should be rearranged so that the first half of the sentence corresponds correctly to the second half. It should read: '... compare an individual monitoring point constituent concentration (or parameter value) with a concentration limit in the water quality protection standard (or with a background parameter value), the test shall be done... '."

Comment response: This change has been incorporated into the proposed regulations except that the parentheses have been omitted.

Comment A58(a) - Section 66264.97(e)(9)(D)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, the phrase 'or monitoring parameter' at the end of the second sentence should be parenthetical."

Comment response: The parentheses around the words "or values" have been removed (instead of adding more parentheses as suggested) because some monitoring parameters will be measured as concentrations while others may be measured by other means (e.g. pH, electrical resistance, and specific conductance).

Comment A58(b) - Section 66264.97(e)(10)(B)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with 66264.97(e)(11)(B), this paragraph should begin 'A procedure for establishing and updating the background value...'."

Comment response: This change has been made to the proposed regulation as suggested.

Comment A58(c) - Section 66264.97(e)(12)(B)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, this paragraph should begin 'For each constituent of concern and for each monitoring parameter, the sampling method, including the interval of time between successive samples, shall be appropriate... '."

Comment response: This change has been made to the proposed regulation as suggested.

Comment A58(d) - Section 66264.97(e)(15)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, this paragraph should begin 'In addition to water quality sampling conducted pursuant to this article, the owner or operator shall measure... '."

Comment response: This subsection has been modified as follows: "<u>In addition to water quality sampling conducted pursuant to the requirements of this article,</u> the owner or operator shall measure...". The words "the requirements of" were added for the sake of clarity.

Comment A58(e) - Section 66264.98(c)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, this paragraph should read 'The owner or operator shall establish a background value pursuant to Section 66264.97(e) (11) of this article for each monitoring parameter specified under subsection (e) of this section, and for each constituent of concern specified under subsection (d) of this section.'"

Comment response: This change has been made to the proposed regulation as suggested except that the phrase "specified under subsection (d) of this section" has been replaced with "specified pursuant to Section 66264.93". This minor modification was necessary because subsection 66264.98(d) has been rewritten. The requirement to specify constituents of concern in the facility permit is found in Section 66264.93.

Comment A59(a) - Section 66264.98(d)(4)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with the definition of water quality protection standard in 66264.92, this paragraph should be reworded because the items described in 66264.98(d)(4) are not part of the water quality protection standard as defined in 66264.92. Section 66264.98(d) (4) should require that the compliance period be specified in the facility permit, and it should cite 66264.96 for the method for determining the length of the compliance period."

Comment response: This comment, although not entirely accurate, identified a serious problem with the clarity of the proposed language. In response, Section 66264.98(d) has been reworded as follows: "(d) The Department shall specify the water quality protection standard under Section 66264.92 in the facility permit." Since the water quality protection standard is now clearly defined in that section, it was not necessary to repeat the definition in this section.

Comment A59(b) - Section 66264.98(d)(5)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with the definition of water quality protection standard in 66264.92, this paragraph should be removed from Section 66264.98(d) because it is not part of the water quality protection standard as defined in 66264.92. However, it is important to include the requirement somewhere in the regulations. A more appropriate location for this requirement would be in Section 66264.98(n)."

Comment response: As described in the response to comment A59(a), this section has been rewritten as follows: "(d) The Department shall specify the water quality protection standard under Section 66264.92 in the facility permit." The requirements for a regulated unit that is performing detection monitoring following a corrective action program have also been rewritten in response to this and other comments. See Section 66264.98(n).

Comment A59(c) - Section 66264.98(e)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, a definition of 'physical parameters', a term which is used in this paragraph and in Section 66264.99(e)(2), should be provided (either in Section 66264.98(e) or in Section 66260.10). This is necessary in order to differentiate 'physical parameters' from the 'indicator parameters' which are mentioned throughout Subpart F (e.g., in 264.98(a)), and which are defined in 66260.10. "

Comment response: A definition of physical parameters has been added to Section 66264.10 as suggested.

Comment A59(d) - Section 66264.98(h)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with the citation of Section 66264.97(e)(12), this paragraph should begin 'The owner or operator shall conduct sampling for each monitoring parameter... ' since the sampling is the one aspect of water quality monitoring which is addressed in that citation."

Comment response: This comment correctly identified an inconsistency in the proposed regulations. After review, this requirement has been modified and moved to Section 66264.98(f). The reference to Section 66264.97(e)(12) has been deleted.

Comment A60(a) - Section 66264.98(k)(1) and (k)(2), and 66264.98(n)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, these paragraphs should indicate that the sampling must be done for all monitoring points at the regulated unit at which there was a statistically significant evidence of a release. Without revision, these paragraphs would require the sampling at all monitoring points at the facility. This does not seem to be the intent of the paragraphs."

Comment response: This change has been made to the proposed regulation as suggested and, in section 66264.98(n) we have also added language to clarify that the requirements only apply to any medium (ground water, surface water, or the unsaturated zone) that was affected by the release from the regulated unit.

Comment A60(b) - Section 66264.98(k) (1)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with 66264.98(k) (2), add 'in the affected medium (ground water, surface water, or the unsaturated zone) ' after 'monitoring points'."

Comment response: This change has been made to the proposed regulation as suggested.

Comment A60(c) - Section 66264.98(k)(3)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, revise the second sentence so that it is clear that only those hazardous constituents which are detected in both sampling events must be added to the list of constituents of concern. For consistency, replace 'water quality protection standard' with 'facility permit' in the second and third sentences."

Comment response: This change has been made to the proposed regulation as suggested.

Comment A60(d) - Section 66264.98(k)(6)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency, replace 'contamination' with 'evidence of a release' and replace 'detection' with 'evidence' in the first sentence. For clarity, 'by' should be inserted such that the last phrase in the first sentence reads '.. .or statistical evaluation or by natural variation in the ground water,...' For consistency, replace 'indication' with 'evidence' in both places that it occurs in the second sentence."

Comment response : These changes have been made to the proposed regulation as suggested. Note: A new subsection, 66264.98(k)(4), has been added, so the subsection referred to in this comment is now Section 66264.98(k)(7).

Comment A60(e) - Section 66264.98(k)(6) and (k)(6)(B)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency with the first sentence of 66264.98(k)(6), add the phrase 'or from natural variation in the ground water, surface water or the unsaturated zone' to the end of

the second sentence in (k)(6) and to the end of the paragraph in (k)(6)(B)."

Comment response: These changes have been made to the proposed regulation as suggested. Note: A new subsection, 66264.98(k)(4), has been added, so the subsection referred to in this comment is now Section 66264.98(k)(7).

Comment A61(a) - Section 66264.98(k)(6)(B)

Commentor A - Environmental Protection Agency Region IX

Comment: "For consistency, replace 'contamination' with 'evidence' in both places it occurs in the paragraph."

Comment response: This change has been made to the proposed regulation as suggested.Note: A new subsection, 66264.98(k)(4), has been added, so the subsection referred to in this comment is now Section 66264.98(k)(7).

Comment A61(b) - Section 66264.100(f)

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, replace 'subsection (e)' with 'subsections (c) and (e)'."

Comment response: This comment correctly identified an error in the proposed regulations. Rather than continue to separate the requirements to implement corrective action measures at and beyond the point of compliance, the subsection 66264.97(c) has been rewritten to require corrective action "throughout the zone affected by the release", and subsection 66264.98(e) has been deleted.

Comment A61(c) - Section 66264.100

Commentor A - Environmental Protection Agency Region IX

Comment: "For clarity, at the end of this section, add a note indicating 'Authority Cited' and 'Reference' for the section."

Comment response: This change has been made to the proposed regulation as suggested.

Comment: A62 - Section 66260.10

Commentor A - EPA Region IX

Synopsis of Comment: The definition of "hazardous constituent " should be reworded. In federal regulations, hazardous constituents are those constituents listed in Appendix VIII of 40 CFR 261. In this Title 22 definition, a hazardous constituent is a constituent which is listed in Appendix VIII and which is a component of hazardous waste or leachate which caused the waste to be identified as hazardous waste The definition in Title 22 is potentially less stringent than that in federal regulations.

In addition, the terms "hazardous constituent" and "constituent" should not be defined as synonymous. In Title 22 water quality monitoring regulations, "constituent" is used synonymously with "constituent of concern" (as in 66264.94(a) and (c)), but in 66260.10 and 66264.93, "constituent of concern" is defined differently from "hazardous constituent."

Recommendation: In the definition of "hazardous constituent" in 66260.10, replace "and" with "or" at the end of paragraph (a), or remove paragraph (b). Remove "or 'constituent'" from part (a) of the definition.

Response to comment: The Department agrees with both of the concerns of the commentor. In response to the first concern, the Department is changing the definition of "hazardous constituent" to reflect that both subsection (a) and subsection (b) are alternative definitions. The first, the list of Appendix VIII to Chapter 11, is a subset of the second definition. A constituent is a "hazardous constituent" if it meets the criteria of either subsection (a) or subsection (b) of the definition. The Department is accepting the suggested language and is, in addition, reformatting the definition to clarify that meeting the criteria of subsections (a) or (b) makes a constituent a hazardous constituent.

To address the second concern, the Department is removing the term "constituent" from this definition. The Department feels that many wastes have multiple constituents, some hazardous, some not hazardous. In addition, other terms used in these regulations, such as the term "Constituent of concern" referred to by the commentor, use the word "constituent" without meaning "hazardous constituent." Thus, hazardous constituents have to be subsets of constituents rather than equivalent to constituents.

Comment A63 - Section 66264.90(a)

Commentor A - Environmental Protection Agency Region IX

Comment: "This paragraph should require financial responsibility for completing corrective action for all releases.

RECOMMENDATION: "Add 'completing' before 'corrective action' in the last sentence."

Comment response: This change has been made to the proposed regulation as suggested. Note : This requirement has been moved to Section 66264.90(c).

Comment A64 - Section 66264.98(j)(2)

Commentor A - Environmental Protection Agency Region IX

Comment: "Title 22 should not provide for the verification of a statistically significant increase during detection monitoring. In Sections 66264.97(e)(7),(8), and (9), Title 22 outlines statistical methods which are equivalent to the statistical methods which are designated in Subpart F (264.97 (h) and (i)). However, in 66264.98(j)(2), Title 22 provides a verification option for the facility if a statistically significant increase is observed in detection monitoring when the designated statistical test is performed. Section 264.98 (g) of Subpart F does not allow this verification option. Detailed requirements for the verification method under Title 22 are given in 66264.98(j) (2), and would result in a reduction in the number of false positives encountered during detection monitoring. Therefore, there is the potential for fewer facilities (or fewer units) to enter evaluation monitoring under Title 22, than would enter compliance monitoring under Subpart F. However, since such facilities entering compliance monitoring under Subpart F would be doing so because of false positives, Subpart F would be requiring compliance monitoring unnecessarily. Therefore, the reduction in false positives in Title 22 is not a stringency issue. However, the verification method in Title 22 would also result in a slight increase in the number of false negatives encountered. Therefore, for facilities which have releases and which should enter evaluation monitoring or compliance monitoring, there is the potential for fewer facilities to actually enter evaluation monitoring under Title 22, than would enter compliance monitoring under Subpart F. It is unclear how many releases would be "missed" as a result of the verification method in Title 22, and how many facilities would remain in detection monitoring instead of entering evaluation monitoring. However, Title 22 is potentially less stringent in allowing the slight increase in false negatives.

RECOMMENDATION : Remove Section 66264.98(j)(2). Reword section 66264.99(k) so that it does not refer to the verification process."

Comment response: The requirements for performing a statistical retest have been modified and moved from section 66264.98(j)(2) to Section 66264.98(e)(8)(E). Since the federal regulations allow the use of "another statistical test method" without any restrictions on the use of verification procedures, the Department believes that the proposed regulations with the stringent verification requirements are more stringent than the federal regulations.

Comment A65 - Section 66264.143(a)(3)(A)

Commentor A - EPA Region IX

Comment summary: This comment recommends deleting section 66264.143(a)(3)(A) on page 2. It is in conflict with section 66264.143(a)(5) on page 4. Renumber subsections "(B)" and "(C)" to "(A)" and "(B)" respectively.

Comment response: This comment will not be accommodated. The nature of this comment cannot be determined as this wording was taken directly from Title 40, Code of Federal Regulations, section 264.143. The language in subsection (3) refers to the pay-in-period as it relates to existing facilities where no financial mechanism has been established. Existing facilities may be those which have been operating as a hazardous waste management facility, but have not yet been put into the system via interim status or permit.

The language in subsection (5) refers to facilities where an alternate mechanism had previously been used and the trust fund is being provided as an alternative method.

Comment A66 - Sections 66264.143(f)(3) and 66264.145(f)(3)

Commentor A - EPA Region IX

Comment summary: This commentor recommends changing language in these sections to read: "...<u>this test is met</u>..." The Environmental Protection Agency regulations are potentially more stringent than the regulations as written ("...this test can be met...").

Comment response: This comment has been accommodated by changing the language as follows: "...this test <u>has been</u> met...".

Comment A67 - Section 66265.144(a)(2)

Commentor A - EPA Region IX

Comment summary: This commentor recommends that this section be modified to allow the possibility of more than thirty (30) years post- closure care. Environmental Protection Agency's regulations are potentially more stringent as the Regional Administrator has the authority to extend the post-closure period for a period greater than thirty (30) years is necessary.

Comment response: This comment will be accommodated by deleting the "30," from the phrase "...by multiplying the annual post-closure cost estimate by 30,..." Please note, under section 66265.117 there is a provision to shorten or <u>extend</u> the post-closure care period if necessary.

Comment A68 - Section 66264.145(a)(3)(A)

Commentor A - EPA Region IX

Comment summary: This comment recommends deleting section 66264.145(a)(3)(A) on page 2. It is in conflict with section 66264.145(a)(5) on page 4. Renumber subsections "(B)" and "(C)" to "(A)" and "(B)" respectively.

Comment response: This comment will not be accommodated. The nature of this comment cannot be determined as this wording was taken directly from Title 40, Code of Federal Regulations, section 264.145. The language in subsection (3) refers to the pay-in-period as it relates to newly permitted facilities. The language in subsection (5) refers to existing facilities where an alternate mechanism had previously been used and the trust fund is being provided as an alternative method.

Comment A69 - Section 66264.145(a)(11)

Commentor A - EPA Region IX

Comment summary: This commentor recommends changing language in this subsection to read: "During the period of post-closure care, the Department <u>may</u> approve a release of funds if the owner or operator demonstrates..." The Environmental Protection Agency regulations are potentially more stringent because they allow the Environmental Protection Agency to withhold funds even if the owner or operator demonstrates that the value of the trust fund exceeds the remaining cost of post-closure care. Change "shall" to "may".

Comment response: This comment will be partially accommodated (but not by changing "shall to "may") by adding the following language to this section:

> "...shall approve a release of funds if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of post-closure care. <u>The Department shall instruct the trustee to make reimbursements in those amounts as the Department specifies in writing. if the Department determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements. the owner or operator shall be provided with a detailed written statement of reasons."</u>

This addendum to the language reinforces the Department's latitude to approve or <u>disapprove</u> release of funds if necessary.

Comment A70 - Section 66264.145(d)(6)

Commentor A - EPA Region IX

Comment summary: This commentor recommends changing "a amount" to "an amount".

Comment response: This comment has been accommodated by making the change as proposed.

Comment A71 - Section 66264.145(f)(3)

Commentor A - EPA Region IX

Comment summary: Page 25, section 66264.145(f)(3) reads "can be met". This is less stringent than "he meets" as appears in the federal regulations.

Comment response: This comment has been accommodated by making the change as follows: "...this test has been met...".

Comment A72 - Sections 66264.143(d)(8)

Commentor A - EPA Region IX

Comment summary: This commentor recommends adopting Environmental Protection Agency's wording requiring final administrative determination to trigger payment of a financial mechanism.

Comment response: See comment response AH 42.

Comment A73 - Section 66264.147(h)(2)(A)

Commentor A - EPA Region IX

Comment summary: This commentor recommends deleting paragraph (2) on page 19. The regulations should read: "(2)(A) In the case of corporations..." This paragraph is carried over from the next page. Delete number 2 from state regulations.

Comment response: The commentor refers to page 19 of this section as where the changes should occur. This is actually page 15 of this section. This comment has been accommodated by deleting paragraph (2) and changing (A) to (2)(A).

Comment A74 - Section 66265.143(c)(8)

Commentor A - EPA Region IX

Comment Summary: This commentor recommends, for consistency, adopting Environmental Protection Agency's wording requiring final administrative determination to trigger payment of a final financial mechanism.

Comment Response: See comment response AH 42.

Comment A75 - Section 66265.143(e)(3)

Commentor A - EPA Region IX

Comment summary: This commentor recommends changing the phrase "... can be met..." to "...is met...", as the language as stated is less stringent than the Environmental Protection Agency regulations.

Comment response: This comment has been accommodated by making the change as proposed.

Comment A76 - Section 66265.144(a)(2)

Commentor A - EPA Region IX

Comment summary: This commentor recommends that this section be modified to allow the possibility of more than thirty (30) years post- closure care. Environmental Protection Agency's regulations are potentially more stringent as the Regional Administrator has the authority to extend the post-closure period for a period greater than thirty (30) years is necessary.

Comment response: See comment response A 67.

Comment A77 - Section 66265.145(c)(9)

Commentor A - EPA Region IX

Comment summary: This commentor recommends adopting Environmental Protection Agency's wording requiring final administrative determination to trigger payment of a financial mechanism.

Comment response: This comment will not be accommodated. The Department is authorized to determine when a payment from a financial mechanism will be made to an owner or operator. This financial mechanism exists in Title 22, section 67006(e).

The terms of each financial instrument is specified in regulation. Each has its procedures for disbursement to an owner or operator. Additionally, the regulations being proposed are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law.

Comment A78 - Section 66264.145

Commentor A - EPA Region IX

Comment summary: This commentor recommends renumbering subsections 3, 4, 5 etc. as subsection 3 and 4 were deleted and subsequent subsections were misnumbered.

Comment response: This comment refers to section 66264.145, however, section 66264.143(e) is the section where subsection (4) has been deleted. Therefore, all subsequent subsections will be renumbered correctly in section 66264.143(e).

Comment A79 - Section 66265.147(h)(2)(A)

Commentor A - EPA Region IX

Comment summary: This commentor recommends deleting paragraph (2) as it is the same as subsection (A), change (A) to (2) (A).

Comment response: This comment has been accommodated by making the change as proposed.

Comment A80 - Department of Health Services Financial Responsibility Forms

Commentor A - EPA Region IX

The response to this comment is divided by letters as follows:

Comment summary: (a) Performance Bond - 2nd side, 8th paragraph not sure why Department of Health Services is putting (Agree/"Do Not Agree") in the optional rider.

Comment response: (a) This comment will be accommodated by making the change as proposed.

Comment summary: (b) Irrevocable Letter of Credit - Not sure if partial drawings is appropriate. Also, letter of credit is missing: "We certify that the wording of this letter of credit is identical to the wording specified in Title 40, Code of Federal

Regulations, section 264.151(d)as such regulations were constituted on the date shown immediately below." Should have a similar section but with state regulatory citation.

Comment response: (b) This comment will be accommodated by making the changes as proposed.

Comment summary: (c) Certificate of Insurance - used the Closure/ Post-Closure - Department of Health Services Regulations regulations language from Title 40, Code of Federal, section 264.143(e) and not Title 40, Code of Federal Regulations, section 264.151. This should be changed.

Comment response: (c) This comment will be accommodated by deleting the wording in the form language (which is duplicative of section 66264.143(8)). Starting with "...The insurer certifies that it will not cancel, terminate or fail to renew this policy ...(5) The premium due is paid."

Comment summary: (d) Financial Guarantee Bond - This appears to be a hybrid of the Guarantee and Performance Bond. Department of Health Services should explain in the Statement of Reasons why this is being done or revise it to separate the Guarantee and Performance Bond.

Comment response: (d) This comment will not be accommodated as the language in Performance Bond specifically refers to permitted facilities only, whereas the Financial Guarantee Bond applies to both interim status and permitted facilities. The performance bond also differs from the guarantee bond in that it states that the surety must "perform" closure and/or post-closure, or pay a third party to do it, if the facility fails to do so.

Comment summary: (e) Corporate Guarantee and Financial Test for Closure and Post-Closure - 5th page, (Alternative II) number 11 add "firm's" assets.

Comment response: (e) This comment will not be accommodated. The term "firm" is restrictive in nature as the assets described in the financial test may be that of the corporate parent and may cause confusion in the case of a corporate guarantee.

Comment summary: (f) Corporate Guarantee for Liability Coverage - Number 1 should refer to the Department of Health Services regulations and not the Environmental Protection Agency. not the 2, 4 and 9 should refer to State regulations only, Environmental Protection Agency. Last page- Certification should only apply to California Regulations.

Comment Response: (f) This comment has been accommodated by making the change as proposed.

Comment summary: (g) Corporate Guarantee for Closure and/or Post-Closure - Number 5, comma after "if" and comma after "guarantee".

Comment response: (g) This comment has been accommodated by making the change as proposed.

Comment A81 - Sections 66264.190 (a) & 66265.190 (a)

Commentor A - Environmental Protection Agency

Comment summary: Change "tanks" to "tank systems" per Federal Register Vol. 53, No. 171, 9/2/88.

Comment response: This comment was accommodated by incorporating the suggested language in the above referenced sections.

Comment A82 - Sections 66264.190 (c) & 66265.190 (c)

Commentor A - Environmental Protection Agency

Comment A82.1: "Delete this section and put the definition of 'underground tanks' in 66260.10. Change the definition of 'underground tanks' to be, 'a device meeting the definition of 'tank' in this section which is substantially or totally beneath the surface of the ground'."

Response: This comment has been accommodated. Definition of "underground tanks" has been deleted from these sections. As recommended above the definition of "underground tanks" has been modified and moved to section 66260.10.

Comment A82.2: "Subsection 66264.190 (c) disallows exemptions (without stating from what) of "sumps which are part of a monitoring system required under section 66264.193...except as provided in subsection (b) of this section." Now Section 66264.193 makes no use of the phrase "monitoring system". But as this section deals exclusively with the requirements for secondary containment, and as Section 66264.190 (b) exempts from the requirements in Section 66264.193 (sic, see previous comment) sumps "that serve as part of a secondary containment system," it seems that the set of sumps being addressed in Section 66264.190 (c) is by definition empty."

Response: This comment has also been accommodated. The proposed language " 'Underground tank' does not include structures such as sumps,... ,except as provided in subsection (b) of this section." has been deleted from subsection (c) of proposed sections 66264.190 and 66265.190.

Comment A83 - Sections 66264.193 (f)(3) & 66265.193 (f)(3)

Commentor A - Environmental Protection Agency

Comment summary: The exceptions from secondary containment for ancillary equipment listed in above referenced sections should also include sealless valves (FR Vol. 53, No. 171, 9/2/88).

Comment response: This comment was accommodated. Suggested inclusion has been made.

Comment A84 - Sections 66264.190 (b) & 66265.190 (b)

Commentor A - Environmental Protection Agency

Comment summary: Change "tanks" to "tank systems" and referenced sections 66264.193 and 66265.193 to sections 66264.193 (a) and 66265.193 (a) respectively.

Comment response: This comment was accommodated by making the suggested changes.

Comment A85 - Sections 66264.193 (a) (2) (B) 1 & 66265.193 (a) (2) (B) 1

Commentor A - Environmental Protection Agency

Comment summary: The above referenced subsections should be eliminated and the rest of this subsections rearranged because these sections establish effective dates for tanks containing non-Resource Conservation and Recovery Act (RCRA) waste only and Sections 66264.193 (a) (2) and 66265.193 (a) (2) exclusively address tanks containing RCRA wastes F020, F021, F023, F026, and F027.

Response: This comment was accommodated by eliminating subsection 66264.193 (a) (2) (B) 1, and merging the text of subsection 66264.193 (a) (2) (B) 2 in subsection 66264.193 (a) (2) (B) which now reads as following:

<u>66264.193 (a) (2) (B)</u> "The effective date of these regulations for tanks containing RCRA hazardous wastes, if the owner/operator is a conditionally exempt small quantity generator or is a 100 to 1,000 kg per month generator."

Similar changes have also been made in subsection 66265.193 (a) (2) (B).

Comment A86 - Section 66264.193 (i)

Commentor A - Environmental Protection Agency

Comment A86.1: "Subsection 66264.193 (i) is in apparent contradiction with subsection 66264.193 (g) and (h). Subsections 66264.193 (g) and (h) provide for variance from having secondary containment. However, subsection 66264.193 (i) disallows variances from substantial secondary containment design and performance requirements, in effect requiring secondary containment."

Recommendation: "Assuming that DHS intends all existing above-ground tanks to have secondary containment system, those requirements of such systems from which variances may be granted should be listed in section 66264.193 (g) and subsection 66264.193 (i) should be eliminated."

Response: The language "A variance may be obtained from the requirement for a sloped base if the tanks are elevated or are otherwise protected from contact with accumulated liquids and all other conditions for a variance are met" has been moved from the proposed subsection (i) to subsection (g).

Comment A86.2: "Subsection 66264.193 (i) states that 'a variance may be obtained from the requirements for a sloped base if the tanks are elevated...' in apparent reference to section 66264.193 (c) (4). However, section 66264.193 (c) (4) requires the secondary containment system to be 'sloped or otherwise designed or operated to drain or remove liquids...'. Subsection 66264.193 (c) (2), which describes the design and performance requirements for the base, makes no mention of the slope."

Response: Since section 66264.193 (c) (4) relates to the base of the secondary containment system, a new language "The foundation or base shall be" has been added at the beginning of subsection (c) (4) of this section.

Comment A86.3: "The variance allowed in subsection 66264.193 (g) are only for "above-ground tanks" which are defined in section 66260.10 as being such that "the entire surface area of the tank is completely above the plane of the adjacent surrounding surface" so it is redundant to further require in section 66264.193 (i) that the tanks be "elevated".

Response: The fact that section 66264.193 (i) allows for a variance for tanks that are "elevated" or otherwise protected from contact accumulated liquids does not make it redundant. The Department believes that it is explanatory and necessary to remind those seeking a variance under this section that tanks must be elevated or otherwise protected before a variance can be granted.

Comment A86.4: "It is unclear why DHS would require that 'an impervious base...surround the tanks to provide secondary containment above-ground" (apparently meaning a dike) in cases where a variance has been granted from having any lining underneath the tanks."

Recommendation: This requirement should be eliminated

Response: The Department agrees with the commentor. The language "If a variance is granted...provide secondary containment above-ground." has been eliminated from the subsection (i) of this section.

Comment A87 - Section 66264.193 (c) (2)

Commentor A - Environmental Protection Agency

Comment Summary: Proposed Section 66264.193 (c) (2) improperly applies design and performance requirements of a secondary containment system to a base designed to support such a system.

Comment response: Proposed language " This base shall be free of cracks or gaps and sufficiently impervious to contain leaks, spills and accumulated precipitation until the collected material is detected and removed" of Section 66264.193 (c) (2) establishes additional requirements for the base underlying the tanks. This requirement has been taken directly from the existing Title 22 CCR regulation, and is stringent than the corresponding federal regulation. Department does not feel that this requirement improperly applies design and performance requirements of a secondary containment system to a base designed to support such a system. Therefore, this comment was not accommodated.

Comment A88 - Section 66264.193 (j) (1)

Commentor A - Environmental Protection Agency

Comment: "40 CFR Sections 264.193 (a) and 265.193 (a) allow the owner or operator of a facility as long as fifteen years from July 1986 to provide secondary containment for tank systems. However, Section 66264.193 (j) (1) requires every feature of secondary containment except leak detection and secondary containment for ancillary equipment 'until such time as secondary containment...is provided'."

Recommendation: 1) Delete this section; or

2) If it is the intent of DHS to require secondary containment for all tank systems immediately then section 66264.193 (a) should be rewritten so that it lists the requirements of section 66264.193 to which the timetable therein applies. Also section 66264.193 (j)

(1) should state precisely when the owner or operator is required to provide secondary containment. If this time is less than two years from the effective date of the new regulations then the requirement for 24 month advance notification of demonstrations for variance from these requirements (section 66264.193 (h) (i)) will have to be adjusted accordingly.

Response: This comment was not accommodated. In proposed regulations the Department has adopted federal timetable for requiring secondary containment for tank systems consistently for both Resource Conservation and Recovery Act (RCRA) and non-RCRA facilities, except that the non-RCRA deadlines are measured from the effective date of these proposed regulations. In the proposed regulations, current 40 Code of Federal Regulations (CFR) requirements have been further modified requiring **permitted facilities** to comply with certain requirements until the time the timetable established pursuant to Section 66264.193 (a) is met. These requirements have been taken directly from the existing Title 22 California Code of Regulations section 67251 (b) and are more stringent than the corresponding federal requirements. Since these requirements are currently in effect in California, therefore, adopting them in the proposed regulations will not impact as such on the facilities.

Comment A89 - Sections 66264.190-.199 & 66265.190-.199

Commentor A - Environmental Protection Agency

Comment summary: At several point in 40 CFR, Part 264, Subpart J, the regulations refer to "existing" tanks. Following the sections making these references are citations of the Federal Register which establish when the regulations were promulgated thus establishing the definitions of "existing". This is missing from the proposed State regulations and so the term "existing" remains undefined. Adopt federal dates for this section.

Comment response: This comment was accommodated. A new language "(51 FR 25472, July 14, 1986; 51 FR 29430, Aug. 15, 1986)" has been incorporated after the word "existing" in Sections 66264.191 (b), 66264.193 (a) (2), (3) & (4) and corresponding sections of Chapter 15. A new language "(from the effective date of these regulations)" has also been incorporeted in Sections 66264.193 (a) (5) & 66265.193 (a) (5) for existing tanks containing non-RCRA hazardous wastes to establish the definition of "existing" for non-RCRA hazardous wastes.

Comment A90 - Sections 264.193 (e) (1) (i) & (e) (2) (i)

Commentor A - Environmental Protection Agency

Comment summary: The commentor recommends amending above referenced sections to read, "...plus the greater of 10 percent of the ..." to make the sections more explicit.

Comment response: This comment was accommodated. The language of referenced sections has been revised as suggested by the commentor.

Comment A91 - section 66264.221 (a) (1)

Commentor - EPA Region IX

Comment summary: The commentor states that the inclusion of the phrase, "maximum probable" could be interpreted as being less stringent than current federal regulations. Federal regulations can be interpreted to require that liners be designed to support the weight of a completely filled surface impoundment, while state regulations could be interpreted to mean that they be designed for the worst case scenario which may not be a completely filled impoundment. The commentor recommends that the phrase, "maximum probable" be deleted.

Comment response: The phrase "maximum probable" will be deleted from the text of this section.

Comment A92 - section 66265.228 (a) (2) (C) (8)

Commentor - EPA Region IX

Comment summary: The commentor points out that the language in this section needs to be clarified as to what requirements a variance may be granted for. Currently the regulation reads, "...the Department may grant a variance from <u>any</u> requirement...". The intent of this exemption appears to mean a variance may be granted from the requirements of conditions (e) through (r), while the language as written could be interpreted to mean that a variance could be given to all closure and post-closure requirements.

Comment response: As suggested by the commentor, the language will be rewritten to read: "8. Conform to the provisions of section 66264.228, except that the Department may grant a variance from the requirements of subsection (e) through (r) which the owner or operator may demonstrate to the satisfaction of the Department..."

Comment A93 - section 66264.228 (e) and (e) (1)

Commentor - EPA Region IX

Comment summary: The commentor believes that the use of the word "site" is ambiguous and is confusing because site usually is used synonymously with facility.

Comment response: This comment will be accomodated by replacing the word "site" with the word "unit".

Comment A94 - section 66264.301 (d)

Commentor - EPA Region IX

Comment summary: The commentor states that the proposed State language is unclear as to whether it is possible that migration of hazardous constituents could be allowed if found not to pose a significant threat. Federal language states that no migration is allowed for alternative designs.

Comment response: This comment will be accomodated by modifying the proposed text to read:

> "The Department may grant an owner or operator an exemption from the requirements of subsection (c), if the owner or operator demonstrates to the Department, and the Department finds for such landfill, that alternative design and operating practices for the landfill, together with location chatacteristics, will prevent the migration of any hazardous constituents into ground water or surface water, or surrounding soils at least as effectively as such liners and leachate collection systems. In deciding whether to grant an exemption, the Department will consider: ...".

Comment A95 - section 66264.301 (b)

Commentor - EPA Region IX

Comment summary: "Hazardous constituents" should be change to "constituents of concern" in order to be consistent with section 66264.93.

Comment response: "Hazardous constituents" will be replaced with "constituents of concern".

Comment A96 - section 66264.301 (b)

Commentor - EPA Region IX

Comment summary: The commentor states that the factors that are to be considered when granting an exemption under section 66264.301 (b) should be the same as those found in Subpart F of 40 CFR. The proposed regulations move the list of factors from 66264.301 (b) to 66264.301 (d).

Comment response: This comment will be accomodated by adding the following sentence to the end of section 66264.301 (b): "In deciding whether to grant an exemption, the Department will consider the factors listed in section 66264.301 (d) (1-5)".

Comment A97 - section 66264.301 (d) (6)

Commentor - EPA Region IX

Comment summary: The commentor recommends that in deciding whether to grant an exemption under 66264.301 (d), the reference to considering the recommendation of the State Water Resources Control Board or the appropriate Regional Water Quality Control Board be deleted.

Comment response: The Department will accomodate this recommendation by deleting the requirement that the Water Board recommendation be taken into account.

Comment A98 - Section 66265.98

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "Title 22 interim status ground water regulations should require annual and semi-annual sampling for certain parameters during the detection monitoring program. This regular sampling is required in Subpart F interim status regulations, and serves to establish a history of ground water quality at the facility. The Subpart F sampling includes: a) annual sampling for six ground water quality parameters listed in 265.92(b)(2), and b) semi-annual sampling for four indicator parameters listed in 265.92(b)(3).

RECOMMENDATION : Add requirements to Section 66265.98 for monitoring during the detection monitoring program annually and semi-annually for the parameters listed in Sections 265.92(b)(2) and (b)(3), respectively, of Subpart F."

Comment response: The Department believes that, while the monitoring parameters listed in Part 265 Subpart F are not universally appropriate, it is important for the owner or operator to consider their usefulness as potential monitoring parameters, to obtain

prior approval from the Department for any substitutions, and to maintain documentation supporting any decision not to include one of these parameters in the list of monitoring parameters. For that reason, the owner or operator will be required to include in the list of monitoring parameters for a regulated unit the ground water quality parameters and the indicator parameters specified in Part 265 Subpart F unless the owner or operator receives written approval from the Department and documents in the facility record that a substitute parameter is more likely to provide early detection of a release from the regulated unit. This requirement can now be found in Section 66265.98(f).

Comment A99 - Section 66265.98(e) and (f)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "The requirements for establishing monitoring parameters for the detection monitoring program should be revised. Subpart F interim status regulations (Section 265.93(b)) require that the statistical test be done on four indicator parameters (pH, specific conductance, total organic carbon, and total organic halogen). While EPA agrees with the Department that these indicator parameters are not necessarily appropriate for all facilities, it is important that the parameters be considered for use as indicator parameters. Title 22 should require that these four parameters be used in the statistical test unless the owner/operator determines, and documents in the facility record, that any of the four parameters does not meet the criteria listed in Section 66265.98(e)(1) through (e)(6), and that another parameter is more appropriate. In that case, the owner/operator should not be required to use the Subpart F indicator parameter (pH, specific conductance, total organic carbon, or total organic halogen) in the statistical test. (Note that these four indicator parameters should remain part of the semi-annual sampling and analysis program, regardless of whether the statistical test is performed on the results of the sampling and analysis. See comment on Section 66265.98.) The general Title 22 requirement in Section 66265.98(e) that the owner/operator establish monitoring parameters for the statistical test based on the criteria listed in Section 66265.98(e) should be retained for the purposes of requiring the facility to specify any additional indicator parameters which are appropriate.

RECOMMENDATION: Revise Sections 66265.98(e) and (f) so that they require use in the statistical test of the four indicator parameters listed in section 265.92(b)(3) of Subpart F, unless the owner/operator documents that other parameters are more appropriate for the statistical test, as discussed above.

Comment Response: The Department agrees with EPA that, while the indicator parameters listed in Part 265 Subpart F are not universally appropriate, it is important for the owner or operator to consider their usefulness as potential monitoring parameters and to maintain documentation supporting any decision not to include one

of these parameters in the list of monitoring parameters. For that reason, the owner or operator will be required to include in the list of monitoring parameters for a regulated unit the indicator parameters specified in Part 265 Subpart F unless the owner or operator receives prior approval for any substitution and documents in the facility record, that a substitute parameter is more likely to provide early detection of a release from the regulated unit. This requirement can now be found in Section 66264.98(f). (Note : Statistical analysis must be performed semi-annually for each monitoring parameter.)

Comment A100 - Section 66265.98(k)(4)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "This paragraph should not allow ninety days for the submittal of the amended water quality sampling and analysis plan to establish an evaluation monitoring program. Section 265.93(d)(2) of Subpart F requires the submittal of the ground water quality assessment plan within fifteen days of the notification of a confirmed statistically significant increase. In addition, Title 22 should specify additional items that must be included in the plan. Section 265.93(d)(3) requires the plan to specify evaluation procedures and a schedule of implementation, in addition to items already listed in Section 66265.98(k)(4) of Title 22.

RECOMMENDATION: Replace 'within 90 days' with 'within 15 days' in Section 66265.98(k)(4). Add items (k)(4)(D) and (k) (4)(E) to Section 66265.98(k)(4) of Title 22, to correspond to items 265.93(d)(3)(iii) and (d)(3)(iv) of Subpart F.

Comment Response: (Please see the overview discussion of the proposed interim status regulations.) The Department does not believe that 15 days is enough time for an owner or operator to prepare an adequate evaluation monitoring program. Unlike existing Part 265 regulations, when there is statistically significant evidence of a release from a regulated unit the proposed regulations require an owner or operator to immediately sample all monitoring points in the affected medium to determine if any constituents listed in Appendix IX are present. The owner or operator must also immediately sample for all constituents of concern. The Department believes that it is important for the owner or operator to consider the results of this sampling and analysis when designing the evaluation monitoring program. (This is consistent with the federal requirements for permitted facilities.)

The requirement to include in the amended sampling and analysis plan "evaluation procedures, including any use of previously-gathered ground water quality information" has not been added to the proposed regulations as suggested. Instead, language has been added to Section 66265.98(k)(5) that requires the owner or

operator to include in the amended water quality sampling and analysis plan "a detailed description of the measures to be taken to assess the nature and extent of the release from the regulated unit". The use of previously gathered information may or may not be important in the investigation of the release. The important point is that the Department must be kept informed of the exact procedures to be used by the owner or operator during evaluation monitoring so that modifications can be made if necessary to protect human health and the environment.

The requirement to include in the amended sampling and analysis plan "a schedule of implementation" has been added to the proposed regulations as suggested.

(Note : The subsection referenced in this comment has been moved and renumbered as Section 66264.98(k)(5).)

Comment A101 - Section 66265.98(k)(6) and 66265.99(f)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "There are two instances in Title 22 in which the facility may return to detection monitoring after confirming a statistically significant increase in monitoring parameters during detection monitoring, if the owner/operator demonstrates that the increase was not due to a release from the regulated unit. They are Section 66265.98(k)(6) and Section 66265.99(f). These two provisions are analogous to Section 265.93(d)(5) and (d)(7) of Subpart F in which the owner/operator must determine as soon as technically feasible whether hazardous constituents have entered the ground water, and if the determination is that hazardous constituents from the facility have not entered the ground water, the owner/operator may reinstate the indicator evaluation program. However, in Section 66265.98(k)(6), the demonstration is to be made within 90 days of the statistically significant increase. This is inconsistent with the Subpart F requirement that a determination be made as soon as technically feasible: 'technically feasible' may be earlier than the 90 days, or later. In Section 66265.99(f), the demonstration may be made at any time during evaluation monitoring. Again, this is inconsistent with Subpart F, since Section 265.93(d)(5) requires the determination as soon as technically feasible. Further, the next step after making the determination in Subpart F (Sections 265.93(d)(6) and (d)(7)) is self-implementing (with notification to EPA), while in Title 22 (Section 66265.98(k)(6)(D) and Section 66265.99(f)(4)), the owner/operator must apparently wait for Department approval of the demonstration before proceeding. since they are not self-implementing, Sections 66265.98(k)(6) and 66265.99(f) are inconsistent with Subpart F.

RECOMMENDATION: For consistency with Section 265.93(d) or Subpart F, and for clarity, the opportunity for returning to detection monitoring after a statistically significant increase should be limited to a provision similar to the determination made 'as

soon as technically feasible' in Section 265.93(d) of Subpart F. Currently, such a provision is found in Section 66265.99(b) of Title 22. Therefore, Sections 66265.98(k)(6) and 66265.99(f) should be deleted. See comment to Section 66265.99(b)/265.93(d)(4) and (d)(6).

Comment response: These sections have not been deleted from the proposed regulations because the Department believes it is important that an appropriate monitoring and response program is required for each regulated unit. If after determining statistically significant evidence of a release an owner or operator demonstrates to the Department that there has not been a release from the regulated unit, the Department will require that a detection monitoring program be continued or re-established. This is necessary so that the appropriate response requirements are operational for the future detection of a release. Although it is certainly in the best interest of all concerned that such a demonstration is made "as soon as technically feasible", the failure of the owner or operator to comply with this ambiguous requirement should not prevent the Department from using its regulatory authority wisely. (Note: Section 66264.98(k)(6) has been moved and renumbered as Section 66264.99(k)(7).)

Comment A102 - Section 66265.99(b)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "The Title 22 requirement in Section 66265.99(b) for assessing the nature and extent of the release from a regulated unit is analogous to the requirement in Section 265.93(d)(4) of Subpart F to determine whether hazardous constituents from the facility have entered the ground water. However, Section 66265.99 (b) does not specify the next step that the owner/operator must take after making the determination. In Subpart F (Section 265.93(d)(6)), the owner/operator must reinstate an indicator evaluation program if it is determined that there are no hazardous constituents from the facility in the ground water. In Title 22, the owner/operator should reinstate the detection monitoring program if it is determined in Section 66265.99(b) that there are no hazardous constituents from the facility in the ground water. This should be the only point at which a facility may be allowed to return to detection monitoring based on a determination of whether there are hazardous constituents from the facility in the ground water. As Title 22 is currently written, the facility may return to detection monitoring at two other points (Sections 66265.98(k)(6) and 66265.99(f)). In addition, this return to detection monitoring is self-implementing in Subpart F, and so should be self-implementing in Title 22.

RECOMMENDATION: Remove Sections 66265.98(k)(6) and 66265.99(f) as opportunities for the facility to return to detection monitoring. (See comment on Sections 66265.98(k)(6) and 66265.99(f)). In addition, it should be made clear in Section 66265.99(b) that the

return to detection monitoring (after a determination is made in 66265.99(b) that hazardous constituents are not found in the ground water) is self-implementing."

Comment response: These sections have not been deleted from the proposed regulations because the Department believes it is important that an appropriate monitoring and response program is required for each regulated unit. If after determining statistically significant evidence of a release an owner or operator demonstrates to the Department that there has not been a release from the regulated unit, the Department will require that a detection monitoring program be continued or re-established. This is necessary so that the appropriate response requirements are operational for the future detection of a release. Although it is certainly in the best interest of all concerned that such a demonstration is made "as soon as technically feasible", the failure of the owner or operator to comply with this ambiguous requirement should not prevent the Department from using its regulatory authority wisely.

The return to a detection monitoring program from an evaluation monitoring program has not been made self-implementing because the Department does not wish to delegate such an important decision to the discretion of the owner or operator. Instead, the owner or operator must submit the information specified in Section 66264.99(f) and continue evaluation monitoring until the Department directs the owner or operator to re-institute a detection monitoring program.

Comment A103 - Section 66265.99(b)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "The requirements for monitoring during the evaluation monitoring program should include a requirement for the owner/operator to determine on a quarterly basis the rate and extent of migration of hazardous constituents in the ground water, and the concentrations of hazardous constituents in the ground water. Subpart F requires this quarterly determination if the owner/operator determines that hazardous constituents have entered the ground water (Section 265.93(d)(7)). Title 22 should require this quarterly determination if the assessment of environmental quality required in Section 66265.99(b) indicates that hazardous constituents have entered the ground water. In addition, the requirement for making these quarterly determinations should be self-implementing.

RECOMMENDATION: Add self-implementing requirements to Section 66265.99(b) (equivalent to those in Section 265.93(d)(4) and (d)(7)) for making quarterly determinations of the quality of the ground water once the owner/operator determines pursuant to Section 66265.99(b) that hazardous constituents have entered the ground water."

Comment Response: These changes have not been made to the proposed regulations because other, self-implementing requirements in this article require the owner or operator to review the water quality monitoring program and to modify it as necessary to comply with the requirements of this article. (See Sections 66265.97(e)(15), 66265.98(m), and 66264.99(h).) The purpose of this requirement is to emphasize the Department's authority to review and modify the water quality sampling and analysis program as necessary to protect human health and the environment.

Comment A153 - Section 66265.91(b) and (c)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "These paragraphs should require that the owner/operator prepare at least an outline of the evaluation monitoring program within one year after the effective date of the regulations. This requirement is found in Section 265.93(a) in Subpart F. Although Section 66265.91(b) requires the submission of a water quality sampling and analysis plan within 90 days of the effective date of the regulations, the plan as originally submitted might not necessarily include all of the elements required in Section 265.93(a) of Subpart F. These elements are the capability of determining a) whether hazardous constituents have entered the ground water, b) rate and extent of migration of hazardous constituents, and c) concentrations of hazardous constituents.

RECOMMENDATION: Revise the paragraphs so that they contain a requirement equivalent to that in Section 265.93(a) of Subpart F, for elements of the outline for an evaluation monitoring program."

Comment Response: These changes have not been made to the proposed regulations because the Department believes that the federal requirement is so ambiguous that it is practically meaningless. Instead, the proposed regulations clearly spell out the steps which must be followed by all facilities whenever statistically significant evidence of a release is detected. (See Sections 66265.98(k) and (l).) These are modified versions of the same requirements that are found in existing 40 CFR for permitted facilities. The requirements include sampling and analysis for all Appendix IX constituents and all constituents of concern, the preparation and submittal of an amended water quality sampling and analysis plan to establish an evaluation monitoring program pursuant to Section 66265.99, and the submittal of a detailed description of the measures to be taken by the owner or operator to assess the nature and extent of the release from the regulated unit.

Comment response: These exact changes have not been made to the proposed regulations because the Department does not believe that quarterly determinations of the concentrations of hazardous constituents in ground water will always be necessary in order to protect human health and the environment. Under the proposed regulation, the owner or operator must monitor at least quarterly unless the owner or operator receives written approval from the Department to conduct semiannual sampling. When specifying the frequency for monitoring the ground water, the owner or operator must consider the rate of ground water flow. If the Department determines that more frequent sampling is required, the Department will modify the sampling and analysis plan pursuant to Section 66264.91(b).

The requirement to determine the rate of migration of hazardous constituents on a quarterly basis has not been included in the proposed regulations because the Department does not believe that this information can be reliably determined at that frequency, or that such information is necessary for the protection of human health and the environment. Predictions of contaminant transport and fate are rarely more than gross estimations based upon other estimated values for such factors as the chemical properties of the constituent or constituents, the structure and mineralogy of the geologic materials, the rate of ground water flow, the geochemistry of the ground water, the location and age of the source, and the first appearance of the leading edge. Other, more useful provisions of this article require the owner or operator to: 1) determine ground water flow rate and direction on a quarterly basis; 2) evaluate changes in water quality due to the release; and 3) evaluate all monitoring data with respect to the design criteria for corrective action.

Comment A104 - Section 66265.99(b)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "In Section 66265.99(b), Title 22 lists various items that shall be included in the assessment done under evaluation monitoring. This list does not mention the owner/operator's responsibility to determine the rate of migration of hazardous constituents in the ground water. To be consistent with Section 265.93(a)(4), Title 22 should mention this item in the list.

RECOMMENDATION : Add the rate of migration of hazardous constituents to the items listed in Section 66265.99(b)."

Comment response: This change has been made to the proposed regulation as suggested.

Comment A105 - Section 66265.97(b)(1)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "This paragraph should clearly state that the ground water monitoring system for the facility must be in place within one year after the effective date of the interim status regulations, and that the evaluation monitoring program should be submitted within one year of the effective date. The requirement for beginning the indicator evaluation program is found in Section 265.90(a) of Subpart F, and the requirement for submitting a ground water quality assessment program is found in Section 265.93(a) of Subpart F. In Subpart F, both activities must occur within one year of the effective date of the regulations. Although it is desirable to base a ground water monitoring system on information obtained from hydrogeologic investigations, as section 66265.97(b)(1) requires, it is undesirable for the facility to postpone monitoring, and to postpone development of monitoring plans, for an extended period of time while waiting for hydrogeologic investigations to be completed. The wording in section 66265.97(b)(1) implies that the owner/operator may not design a monitoring system, and may not begin monitoring, until hydrogeologic investigations have been completed.

RECOMMENDATION : Add a requirement to this section that the owner/operator must begin detection monitoring, and must submit an evaluation monitoring program, within one year after the effective date of the regulations. The requirement may be retained in Section 66265.97 (b) (1) that these activities must be based upon those hydrogeologic investigations which have been completed by that time (i.e., within one year of the effective date of the regulations)."

Comment response: The recommendations made in this comment have not been incorporated into the proposed regulations because the Department does not want to imply that a ground water monitoring system can be designed without adequate characterization of ground water flow rate and direction. However, in order to satisfy EPA's concerns, and to clarify the requirement, language has been added to require that the monitoring system must be operational within 180 days of the effective date of these regulations.

Proposed Section 66265.91(b) requires the owner or operator to submit to the Department a water quality sampling and analysis plan that satisfies the requirements of Article 6 and initiate a water quality monitoring program within 180 days of the effective date of the proposed regulations. Section 66265.97(b)(1) requires that the monitoring system be based upon information from hydrogeologic investigations of the facility area, including the identification of the uppermost aquifer and aquifers hydraulically interconnected and a determination of the ground water flow rate and direction in each aquifer. This means that <u>at least</u> that much of the hydrogeologic investigation must be complete within 180 days of the effective date of the proposed regulations. If an owner or operator fails to complete at least that portion of the

hydrogeologic investigation, he or she will be out of compliance with the regulations.

Comment A106 - Section 66265.110

Commentor A - Environmental Protection Agency

Comment summary: 40 CFR Section 265.110 was revised September 2, 1988 to add subsection (b) (2) concerning additional facilities that are subject to post-closure care as follows: "Waste piles and surface impoundments for which the owner or operator intends to remove the waste at closure to the extent that these sections are made applicable to such facilities in section 265.228 or section 265.258." This change has not been incorporated in the proposed regulations. This change makes the section more stringent than the State regulations as written because it expands the applicability of the regulations, and therefore should be incorporated.

Comment response: This change was accommodated. Suggested language has been incorporated as subsection (b) (2) into the proposed Section 66265.110.

Comment A107 - Section 66264.117 (a), 66265.117 (a)

Commentor a - Environmental Protection Agency

Comment summary: New sub-section (a) of above referenced sections should be modified as following subsections apply to instances where "waste residues, contaminated materials or contaminated soils are left in place" and are not limited to instances where "hazardous waste" will remain on site.

Comment response: This comment was not accommodated as the Department does not concur with EPA's interpretation that Sections 66264.117 and 66265.117 apply only to instances where "waste residues, contaminated materials or contaminated soils are left in place" during closure.

Comment A108 - Section 66265.117 (c) (2)

Commentor A - Environmental Protection Agency

Comment summary: Contents of the new subsection (66265.117 (c) (2)) would require amendment of post-closure plan and public notice, and thus may cause delays. It appears that the Department intends the extension under (c) (2) to apply after post-closure has ended since (c) (1) covers the period through post-closure.

Comment response: Department agrees with the EPA on vagueness of the applicability of subsection (c) (2). Department intends to apply the requirements of this subsection during part or all of the post-closure period, contrary to EPA's interpretation. Therefore, to clarify this the Department has merged subsection (c) (2) into (c) (1) by changing the section numbers of Subsection (c) (2) to (c) (C), and Subsection (c) (1) to (c).

Department also agrees that to comply with the requirements of new subsection (c) (2), post-closure plan has to be amended and public-noticed. Since the requirements of this subsection has been taken directly from the current Title 22 CCR Section 67217 (c) and are more stringent than the corresponding federal regulation, therefore, the concern expressed in your comment was not accommodated.

Comment A109 - Sections 66264.117 (f) & 66265.117 (f)

Commentor A - Environmental Protection Agency

Comment summary: Modify language of above referenced sections so that it is clear that requirements of 66264.117 (d) and 66265.117 (d) are the criteria for granting a variance.

Comment response: This comment was accommodated. Suggested changes has been made in the proposed Sections 66264.117 (f) and 66265.117 (f).

Comment A110 - Section 66265.118 (d)

Commentor A - Environmental Protection Agency

Comment summary: Typo: Anytime should be any time.

Comment response: This comment was accommodated.

Comment: A111 - Sections 66264.119 (a) & (b) (1) (C) and 66265.119 (a) & (b) (1) (C)

Commentor A - Environmental Protection Agency

Comment summary: The term "area" has been substituted for "disposal unit." A record of the waste disposed in each "area" is required to be submitted to the Department and local land use authority. Depending on the definition of "area" this change could be more or less stringent than federal regulations. "Area" is not defined in the definitions sections. Therefore, use the federal language, or define "area" in the definition section of proposed regulations.

Comment response: The comment is being accommodate by adding the phrase "(not limited to only hazardous waste disposal unit)"

Comment A112 - Sections 66264.114 & 66265.114

Commentor A - Environmental Protection Agency

Comment summary: References to Sections 66264.197 and 66265.197 per Federal Register revision of September 2, 1988 have not been incorporated in proposed Sections 66264.114 and 66265.114.

Comment response: This comment was accommodated as suggested.

Comment A113 - Section 66260.10

Commentor A - EPA Region IX

Comment summary: This commentor recommends adding the definition for "current plugging and abandonment cost estimate" to this section.

Comment response: This comment has been accommodated by making the change as proposed.

Comment A114 - Section 66264.145(d) (8)

Commentor A - EPA Region IX

Comment summary: This commentor recommends adding the word "a" between the words "approve" and "decrease" in this paragraph.

Comment response: This comment has been accommodated by making the change as proposed.

Comment A115 - Section 66264.147(a)(8)

Commentor A - EPA Region IX

Comment summary: This commentor recommends changing the words "Regional Administrator" to "Department".

Comment response: This comment has been accommodated by making the change as proposed.

Comment A116 - Section 66264.147(b)(7)

Commentor A - EPA Region IX

Comment summary: This commentor recommends adding the word "another" between the words "specify" and "assurance" in the phrase "... the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify another assurance as "excess coverage".

Comment response: This comment has been accommodated by making the change as proposed.

Comment A117 - Section 66264.147(b)(8)

Commentor A - EPA Region IX

Comment summary: This commentor recommends changing the words "Regional Administrator" in this section to "Department".

Comment response: This comment has been accommodated by making the change as proposed.

Comment A118 - Section 66264.147(g)(1)

Commentor A - EPA Region IX

Comment summary: This commentor recommends correcting this section to say "...To pass this test the owner or operator shall meet the criteria of subsection (g)(1)(A) or (B). (Drop the (i))

Comment response: This comment has been accommodated by making the change as proposed.

Comment A119 - Section 66264.147(i)(1)

Comment summary: This commentor recommends changing "Regional Administrator" to "Department".

Comment response: This comment has been accommodated by making the change as proposed.

Comment A120 - Section 66264.147(j)(1)

Comment summary: This commentor recommends adding an "s" to the word "requirement" in the first paragraph of this section.

Comment response: This comment has been accommodated by making the change as proposed.

Comment A121 - Section 66264.151(a)(1) Section 14.

Commentor A - EPA Region IX

Comment summary: This commentor recommends replacing the word "it's" with "its" in line 9 of this paragraph.

Comment response: This comment has been accommodated by making the change as proposed.

Comment A122 - Section 66264.151(h)(2)(.7)

Comment summary: This commentor recommends changing this phrase to read "...continuing as a guarantor, the Guarantor shall establish alternate liability coverage..."

Comment response: This comment has been accommodated by making the change as proposed.

Comment A123 - Section 66264.151

Comment summary: This commentor recommends the following changes:

Pg. 53-Second paragraph, third line should read: (sudden and/or non- sudden)

Pg. 54-Fifth paragraph, third line: substitute "provides" for "has provided"

Pg. 62-Eighth line down from the top of the page: substitute "owned" for "owners"

Pg. 64-Second line down from the top of the page: substitute "Title 22. 66264.151(k)" for "Title 40 Code of Federal Regulations 66264.151(k)"

Pg. 64-Second to last line at the bottom of the page: substitute "hazardous waste identification number" for "Environmental Protection Agency identification number"

Pg. 70-Sixth line from the top of the page: substitute "Department of Health Services " for "Environmental Protection Agency"

Pg. 71-Second line from the top of the page: substitute "Title 22. 66264.151(1)" for "Title 40 Code of Federal Regulations 66264.151(1)"

Comment response: These comments have been accommodated by making the changes as proposed.

Comment A124 - Section 66264.151(m)(1)(b) Section .3

Comment summary: This commentor recommends section 3 reads as follows:

"The Grantor and Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of any and all third parties injured or damaged by (sudden and/or nonsudden) accidental occurrences arising from the facility(ies) covered by this guarantee..."

Comment response: This comment has been accommodated by making the changes as proposed.

Comment A125 - Section 66264.151(b) Pg. 15

Comment summary: This commentor recommends this phrase be changed as follows: "Principal and Surety(ies) hereby agree..." instead of "Principal and Surety(ies) hereby Agree/Do Not Agree (check one)..."

Comment response: This comment will be accommodated by making the above change as proposed.

Comment A126 - Section 66264.151(d)(2)

Commentor A - EPA Region IX

Comment summary: This commentor recommends deleting the phrase "Partial drawings are permitted." The federal regulations do not allow partial drawings from the letter of credit. Partial drawing of funds may be executed through the standby trust fund.

Comment response: This comment has been accommodated by making the change as proposed.

Comment A127 - Section 66264.93 and 66260.10

Commentor A - Environmental Protection Agency Region IX

Comment: "Sections 66264.93 and 66260.10 should define constituents of concern at a minimum as 'hazardous constituents which have been detected in the ground water'. The current Title 22 definitions encompass many constituents other than those required in Section 264.93(a), but these additional constituents will not necessarily include those required in 264.93(a). Also, since 66264.98(k)(3) requires all hazardous constituents found as a result of Appendix IX sampling to be added to the list of constituents of concern, the original definitions of constituents of concern in Sections 66264.93 and 66260.10 must include this aspect of the term.

RECOMMENDATION : The definitions in Sections 66264.93 and 66260.10 should read: 'Constituents of concern are hazardous constituents that have been detected in the ground water, and waste constituents, reaction products, and hazardous constituents that are reasonably expected to be in or derived from waste contained in the regulated unit."

Comment response: The definition of a constituent of concern has not been changed in the proposed regulations because the Department does not believe it is appropriate to use monitoring and response requirements for regulated units to address constituents that are not "reasonably expected to be in or derived from" that unit. This is consistent with the federal definition of a hazardous constituent in 40 CFR Section 264.93(a): "Hazardous constituents are constituents identified in Appendix VIII of Part 261 of this chapter that have been detected in ground water in the uppermost aquifer underlying a regulated unit <u>and that are reasonably expected to be in or derived from waste contained in a regulated unit</u>, unless the Regional Administrator has excluded them under paragraph (b) of this section."

The comment correctly identifies an inconsistency in Section 66264.98(k)(3). This requirement has been modified to exclude constituents that are not reasonably expected to be in or derived from waste in the regulated unit.

Comment A128 - Section 66264.94(a)

Commentor A - Environmental Protection Agency Region IX

Comment: "The owner/operator (or the Department) should not be allowed the option to decide whether or not ground water could be affected by a release from the regulated unit. In Subpart F, once the list of hazardous constituents is set pursuant to 264.93, a concentration limit must be set for each constituent: no further 'out' is allowed. Further, it is important to note the logical error between the wording in 66264.93, and that in 66264.94(a).

Section 66264.93 states that the constituents of concern shall include the following: waste constituents, reaction products, and hazardous constituents that are reasonably expected to be in or derived from waste contained in the regulated unit. According to this requirement, the constituents of concern will be the same for all three media, since the nature of the media is not a criterion for setting the constituents of concern. However, Section 66264.94(a) implies that, once the constituents of concern are identified, the owner/operator need not set concentration limits for them in all media. Therefore, the nature of the media becomes a criterion for whether or not to set concentration limits for the constituents of concern. This is not consistent with 66264.93: in effect the list of constituents of concern could be different for different media.

RECOMMENDATION : The phrase 'that could be affected by a release from the regulated unit' should be removed from this paragraph."

Comment response: This comment correctly identified an inconsistency in the proposed regulations. This subsection has been rewritten to require the owner or operator to establish concentration limits for each medium "monitoring pursuant to Section 66264.97." Since Section 66264.97 always requires that ground water be monitored, this will not be less stringent than the federal requirement.

Comment A129 - Section 66264.94(a)(2)

Commentor A - Environmental Protection Agency Region IX

Comment: "The regulations in Title 22 for determining concentration limits in the water quality protection standard appear to be less stringent than those in Subpart F. Section 66264.94(a)(2) of Title 22 allows the concentration limit to be equal to an adjustable background value, which would reflect the current background levels in the ground water, as long as the procedure for establishing and updating the background value is specified in the permit. However, 264.94(a)(1) of Subpart F requires that the concentration limit must not exceed the background level of that constituent in the ground water at the time that the limit is specified in the permit. The approach taken in Title 22 appears more accurate than the approach taken in Subpart F. However, it is possible that, in Title 22, using background values that fluctuate 'automatically' would increase the likelihood that the Department will not be alerted to unusual occurrences in the ground water.

RECOMMENDATION : This difficulty might be addressed by requiring that the owner/operator re-evaluate annually the procedure which is specified in the permit (pursuant to 66264.94(a)(2)) for establishing and updating concentration limits equal to background. The re-evaluation would be submitted to the Department for review."

Comment response: This change has not been made to the proposed regulations for the reasons discussed below.

During a detection monitoring program under existing Subpart F, the background value of a monitoring parameter may be continually re-calculated to reflect natural variation in ground water quality. (See the Federal Register for October 11, 1988 - 53 FR 39723.) When the ground water protection standard is established for either a compliance monitoring or a corrective action program, concentration limits are specified for each hazardous constituent. When asked why the regulations do not address natural variation in ground water quality during these programs, EPA technical staff in Washington, D.C. explained that they were concerned that there would be trouble enforcing a "standard" that had variables in it. The Department believes that the proposed regulations have successfully solved that problem by requiring that the permit contain a detailed description of the statistical procedures to be used to update background values, and by requiring the water quality protection standard to contain a statement that, at any point in time, the concentration limit for a constituent will be equal to the background value of that constituent as determined through use of the specified procedure.

Under the federal regulations, the water quality protection standard is established during a compliance monitoring program. Corrective action is required only after the standard has been exceeded. Under the proposed regulations, the water quality protection standard is not used during evaluation monitoring to trigger corrective action. (The standard is established at background values during detection monitoring. Once the standard is exceeded the owner or operator initiates an evaluation monitoring program to determine the nature and extent of contamination and to prepare for corrective action.) Therefore the only potential problem caused by allowing concentration limits to vary, is in the establishment of "clean-up concentrations" for a corrective action program.

In the case where the background quality of ground water is improving, the proposed regulations are more stringent than the federal regulations because the owner or operator would be required to achieve the new, lower concentration limits. In the case where the background quality of ground water is deteriorating, the Department believes that the legal responsibility of the owner or operator to perform corrective action must be limited to the removal of any contamination contributed to the aquifer due to the release from the regulated unit.

The Department believes that, in practice, the federal regulations would operate to allow the same "clean-up concentrations" that would be allowed under the proposed regulations. If an owner or operator determined that deteriorating background ground water quality was causing the owner or operator to continue corrective action beyond what would be required due to a release from a regulated unit, the owner or operator would submit an application to end corrective action. At that point the Regional Administrator

could establish new concentration limits equal to the current background values for each constituent. Since a public hearing is required under the proposed regulations for a permit modification to end a corrective action program, the Department believes that the end result would be the same as it would be under the federal regulations. Further, the Department feels that the proposed regulations are technically sound, more straight-forward than the existing federal requirements, and address the problem of natural variation in a logical, and defensible manner.

Comment A130 - Section 66264.94(c)

Commentor A - Environmental Protection Agency Region IX

Comment: "Section 66264.94(c) should be reworded. As written, requirements for setting concentration limits greater than background for the water quality protection standard appear to be less stringent than those in Section 264.94(b) or Subpart F. However, upon close literal reading, they prove to be more stringent. Because of the organization and wording of Section 66264.94(c), the intention of the regulations is left subject to misinterpretation, and this misinterpretation would result in the implementation of less stringent requirements. For example, under Title 22, a facility is not eligible for concentration limits greater than background for their clean-up standards if it is technologically or economically feasible for the facility to reach background levels in a corrective action clean-up. However, Section 66264.94(C)(1) does not clearly state this; instead the language would be readily misinterpreted to allow an owner/operator to obtain a concentration limit greater than background on the basis of the technological or economic infeasibility of reaching back-ground in a corrective action clean-up. In Subpart F, technological or economic infeasibility are not criteria which an alternate concentration limit may be based on. In general, in Section 66264.94(C) it is not clear that it is the lowest concentration limit greater than background, obtained by applying the criteria in each of the subsections, which must be used.

RECOMMENDATION : Reorganize Section 66264.94(c) so that it is clear that the lowest concentration limit greater than background which is obtained by applying the criteria in each of the subsections is the concentration limit greater than background which must be used."

Comment response : In response to this comment Section 66264.94(c) has been completely reorganized and rewritten with the assistance of EPA technical staff. The requirements addressed in this comment are now found in Section 66264.94(c) through (h). EPA has reviewed and approved the modified language.

Comment A131 - Section 66264.94(c)(3)

Commentor A - Environmental Protection Agency Region IX

Comment: "This paragraph should be reworded so that it is clear that the lower of the following two is chosen for the concentration limit greater than background: a) the concentration limit established pursuant to the health based and environmental criteria in (c)(4), or b) any concentration below that established pursuant to the criteria in (c)(4), but equal to or above background, which is technologically or economically achievable. As written, (c)(3) could allow a concentration limit of, e.g., 15 to be used if that was the lowest concentration that is technologically or economically achievable, even if (c)(4) would independently establish a concentration limit of, e.g., 5. Subpart F would not allow technological or economic considerations to raise the concentration limit above that established according to health based and environmental criteria.

RECOMMENDATION : The paragraph should read : '... the proposed concentration limit greater than background is no greater than the lowest concentration...'."

Comment response: This requirement has been moved to subsection 66264.94(e)(2) and modified as follows: "(e) In no event shall a concentration limit established under Section 66264.94(d) for a constituent of concern exceed any of the following:

(1) ...

(2) The lowest concentration that the owner or operator demonstrates to the satisfaction of the Department is technologically and economically achievable; or

(3) ..."

Comment A132 - Section 66264.94(c)(4)(A)

Commentor A - Environmental Protection Agency Region IX

Comment: This consideration should be removed from the list of criteria used to establish concentration limits greater than background. Section 66264.94(c)(4)(A) does not name the specific federal, state, and local agencies, and the specific programs within those agencies are not identified. Therefore, it is not possible to determine whether the criteria these agencies use to set these standards are equivalent to the criteria in Subpart F (listed in 264.94(b)). It is possible that the criteria used by these agencies are less stringent than those in Subpart F, and would result in a 'health or environmentally based standard' that is higher than the alternate concentration limit which would be set under Subpart F. Title 22 regulations would allow this higher health or environmentally based standard to affect the

decision-making process for setting concentration limits greater than background, which could result in a concentration limit greater than background which is higher than the corresponding alternate concentration limit under Subpart F.

RECOMMENDATION: Remove section 66264.94(C)(4)(A)."

Comment response: This change has been made to the proposed regulation as suggested.

Comment A133 - Section 66264.94(c)(4)(B)5. and (c)(4)(C)(6)

Commentor A - Environmental Protection Agency Region IX

Comment: Reference to Water Quality Control Plans should be removed from the list of criteria used to establish concentration limits greater than background. Water Quality Control Plans are Regional Board or State Board plans for providing guidelines for management of water resources in various regions across the state. The recommendations in Water Quality Control Plans are based on economic, political, demographic, and land use considerations. These criteria are potentially less stringent than those in Subpart F: economic and political criteria, for example, are not considered in 264.94(b). Thus, water quality objectives, which are concentration limits established in the Water Quality Control Plans, may be set higher than the alternate concentration limits which would be set under Subpart F. Title 22 would allow this higher water quality objective to affect the decision-making process for setting concentration limits greater than background, which could result in a concentration limit greater than background which is higher than the corresponding alternate concentration limit under Subpart F.

RECOMMENDATION : Remove references to water quality objectives and Water Quality Control Plans from each paragraph.

Comment response: The requirement that the Department consider water quality objectives established in water quality control plans when establishing concentration limits greater than background has been moved and rewritten to satisfy the concern expressed in this comment. Subsection 66264.94(e)(3) now states that a concentration limit greater than background for a constituent shall not exceed the water quality objective for that constituent established in the applicable Water Quality Control Plan. This requirement helps to assure consistent use of regulatory authority by both the Department and the Regional Water Quality Control Boards in a manner which is most protective of the environment.

Comment A134 - Section 66264.94(c)(7)

Commentor A - Environmental Protection Agency Region IX

Comment: "It should be made clear in which programs the concentration limits greater than background may be used. Section 66264.98(d)(2) requires the Department to specify the water quality protection standard in the facility permit for detection monitoring according to the requirements of Section 66264.94. However, Section 66264.94 describes the process for setting concentrations limits greater than background as well as concentration limits equal to background. It is not clear whether, in setting concentration limits for a detection monitoring program, the owner/operator may only propose, and the Department may only specify, concentration limits equal to background (as Section 66264.98(i)(1) would suggest), or whether concentration limits greater than background are an option. The matter is further confused by the fact that elsewhere (e.g., 66264.94(c) and 66264.94(c)(8)), it is implied that concentration limits greater than background may apply only during corrective action, and during detection monitoring after successful completion of corrective action clean-up. Therefore, in some cases, Section 66264.98(d)(2) would allow the use during detection monitoring of concentration limits greater than background, and in some cases it would not. Subpart F requires the use of background ground water quality data during detection monitoring (see Section 264.98(f)(1)). Section 66264.94(c)(7) should be revised so that it precludes the possibility that Section 66264.98(d)(2) be misinterpreted to allow use of concentration limits greater than background during an 'original' detection monitoring program (i.e. , one that is instituted before any release from a regulated unit).

RECOMMENDATION : Section 66264.94(c)(7) should be revised: the phrase 'during corrective action, or during detection monitoring following corrective action' should be added after 'may only be applied'."

Comment response: This change has been made to the proposed regulation as suggested. (Note this section has been moved and renumbered as 66264.94(g).)

Comment A135 - Section 66264.97(b)(1)(C)1. and (b)(1)(D)1.

Commentor A - Environmental Protection Agency Region IX

Comment: "It should be made clear in these paragraphs that the monitoring is required at the point of compliance.

RECOMMENDATION : The phrase 'that represent the quality of ground water passing the point of compliance' should be added to each paragraph."

Comment response : This change has been made to the proposed regulation as suggested.

Comment A136 - Section 66264.98(n) and 66264.100(i)(3)

Commentor A - Environmental Protection Agency Region IX

Comment: "Title 22 should not allow the owner/operator to return to detection monitoring during the compliance period. Sections 66264.98(n) and 66264.100(i)(3) describe the activities which the owner/operator must undertake when returning to detection monitoring after the successful completion of a corrective action program (while the facility remains in the compliance period as defined in 66264.96). Although Subpart F regulations do not specify what programs should be maintained during the compliance period, the July 26, 1982 Federal Register preamble (p.32294) states that either the compliance program or the corrective action program will continue through the compliance period under 264.96. Thus it is clear that under Subpart F, after the successful completion of a corrective action program within the compliance period, the owner/operator is to return to compliance monitoring. For Title 22 to be equivalent, it would be necessary for the owner/operator to return to a 'modified' detection monitoring program, which is similar in its monitoring requirements to Subpart F's compliance monitoring. A 'modified' detection monitoring program would include Appendix IX monitoring annually (as already required in 66264.98(n)), semi-annual monitoring for hazardous constituents found in the ground water as a result of the Appendix IX monitoring, performing a statistical test on the data gathered, notification requirements for the data gathered, and triggering of corrective action if a statistically significant release is observed.

RECOMMENDATION : Either a) 'modified' detection monitoring requirements (as discussed above) should be placed in the appropriate places in Title 22 ground water regulations, or b) Sections 66264.98(n) and 66264.100(k)(3), and any other sections which refer to the implementation of detection monitoring after corrective action during the compliance period, should be revised to delete those references."

Comment response: The change recommended in option "a" has been made to the proposed regulation as suggested. Section 66264.98(n) has been modified to include a requirement that the monitoring parameters for each medium must include all hazardous constituents that have been detected in that medium due to a release from the regulated unit. Semi-annual monitoring and statistical evaluation are required for all monitoring parameters during a detection monitoring program. Anytime statistically significant evidence of a release is found, corrective action is "triggered". (Note: under the proposed regulations each new release will require a new evaluation monitoring program to evaluate the nature and extent of contamination and to prepare for corrective action.

Comment A137 - 66264.99(a)

Commentor A - Environmental Protection Agency Region IX

Comment: "This paragraph should require that the water quality protection standard be specified or updated for the evaluation monitoring program. The four aspects of the water quality protection standard are involved: the list of constituents of concern, their concentration limits, the compliance point, and the compliance period. EPA recognizes that it is implied throughout the Title 22 ground water monitoring regulations that concentration limits greater than background do not apply during evaluation monitoring (e.g., see Section 66264.94(C)(7), and the comment on that section). Since Subpart F allows the use of alternate concentration limits during compliance monitoring, Title 22 is more stringent than Subpart F in this respect. However, it is important that the concentration limits greater than background be specified in the permit modification for evaluation monitoring, even though they will not apply during evaluation monitoring. This is because Title 22, like Subpart F, requires that during a corrective action program, the owner/operator ensure that regulated units achieve compliance with the water quality protection standard (see Section 66264.100(b)). If the Department has not specified the concentration limits greater than background (e.g., in the facility permit) before the proposed corrective action is due from the owner/operator, the owner/operator will not be able to propose a meaningful corrective action program: he will not know which of his proposed concentration limits greater than background have been approved, and so will not know which hazardous constituents to address, and will not know to which concentration limits he is expected to clean up. Therefore, it is important that the water quality protection standard is updated in the evaluation monitoring program with the approved concentration limits greater than background. It is also necessary to update the list or constituents of concern in the permit modification for evaluation monitoring. The Appendix IX sampling required in Section 66264.98(k)(2) will potentially augment the list of constituents of concern by identifying hazardous constituents in the ground water which had not been anticipated in the list of constituents of concern established for the detection monitoring program under Section 66264.98 (d)(1). Finally, the compliance point and the compliance period apply during the evaluation monitoring program, and although they have already been established during the detection monitoring program, and will normally be the same during the evaluation monitoring program, they should be restated in the permit modification for evaluation monitoring.

RECOMMENDATION: Section 66264.99(a) should contain a requirement, similar to that found in Section 66264.100(b), that the Department specify or update the water quality protection standard in the facility permit (i.e., the permit modification for evaluation monitoring). For further clarification of the matter of concentration limits greater than background, a requirement might be added to Section66264.98(k)(5) which requires the Department to specify the approved concentration limits greater than background in the

permit modification for evaluation monitoring. It will also be necessary to revise Section 66264.99(d)(2), 'proposed for a corrective action program' should be replaced with 'specified in the facility permit'."

Comment response: The changes proposed in this comment have not been incorporated into the proposed rule because the Department believes it is unwise to approve cleanup concentrations before the nature and extent of contamination have been determined. (Note: Section 66264.92 already requires that the water quality protection standard be specified in the facility permit. It is not necessary to repeat that requirement here.)

The concern, expressed in this comment, that an owner or operator will not be able to prepare an effective corrective action program until clean-up concentrations are established is a valid concern. The Department does not, however, intend to establish these limits prematurely. The Department expects that any facility that is preparing for a corrective action program will be in frequent communication during the evaluation monitoring program with the permitting unit at the regional office. Permit conditions are also subject to public review through the permitting process and through the California Environmental Quality Act (CEQA). In addition, the Department believes that the criteria for establishing concentration limits greater than background can be used by an owner or operator as an effective predictor of Departmental approval. For example:

1) An owner or operator must expect to be required to clean-up to background concentrations whenever it is technologically and economically feasible to do so. (Section 66264.94(c)); and

2) For constituents with health or environmentally based standards promulgated by the Department or by USEPA, the concentration limit may not exceed the health based standard. (Section 66264.94(e)(1)).

EPA has expressed concern that initiation of corrective action could be delayed by repeated unsuccessful attempts to obtain concentration limits greater than background. In response to that concern, the proposed regulations have been modified to include a requirement that the engineering feasibility study must contain, at a minimum, a detailed description of the corrective action measures that could be taken to achieve background concentrations for all constituents of concern. Since this same information will be needed as part of the justification for a concentration limit greater than background, this new requirement satisfies EPA's concern about undue delays without adding an unreasonable burden to the owner or operator.

Comment A138 - 66264.99(a)

Commentor A - Environmental Protection Agency Region IX

Comment: "RECCOMMENDATION:
Section 66264.99(a) should contain a requirement, similar to that found in Section 66264.100, that the Department specify or update the water quality protection standard in the faciltiy permit (i.e., the permit modification for evalutiaon monitoring). For further clarification of the matter of concentration limits greater than background, a requirement maight be added to Section 66264.98(k)(5) which requires the Department to specify the approved concentration limits greater than background in the permit modification for evaluation monitoring. It will also be necessary to revise Seciton 66264.99(d)(2) as a result of the revision discussed above. In Seciton 66264.99(d)(2), "proposed for a corrective action program" should be replaced with "specified in the facility permit."

Response to comment: New Section 66264.99(d)(2) was added to accommodate the commentor's first concern. However, Section 66264.94(b) requires that the Department specify an approved concentration limit greater than background in the permit; it is not necessary to add that statement to Section 66264.98. New Section 66264.99(d)(2) accounts for the changes discussed above. The language suggested by the commentor cannot be accommodated because the document discussed by that section is an application for the very permit modification which <u>will</u> specify the information containing the alternate concentration limits. It is not possible to refer in an application to numbers to developed in response to that application.

Comment A139 - 66264.99(b), (c) and (d)

Commentor A - Environmental Protection Agency Region IX

Comment: "Time frames should be specified for the activities required in 66264.99(b), (c) and (d). Section 264.99(h)(2) of Subpart F requires that the owner/operator submit an application for permit modification to establish a corrective action program within 180 days (or within 90 days if an engineering feasibility study has been previously submitted) of exceeding the ground water protection standard in the compliance monitoring program. Although in Title 22 the facility is put on the corrective action track when the water quality protection standard is exceeded in detection monitoring, there is no set time frame for the owner/operator to submit the application for corrective action. Therefore, there is the potential for the owner/operator to submit the application later under Title 22 than it would under Subpart F, unless a time frame at least as stringent as that required by Subpart F is added to Title 22. Since the owner/operator has already submitted an engineering feasibility study in Title 22 (see Section 66264.98(k)(5)(A)), Title 22 should require the subsequent submittal of an application for permit modification to establish a

corrective action program within 90 days of establishing an evaluation monitoring program.

RECOMMENDATION: The following revision should be made to the last sentences of paragraphs (b), (c) and (d): the phrase 'according to a schedule of compliance established by the Department' should be replaced with 'within 90 days of establishing the evaluation monitoring program'."

Comment response: These changes have been made to the proposed regulation as suggested.

Comment A140 - 66264.99(e)(2)

Commentor A - Environmental Protection Agency Region IX

Comment: "During evaluation monitoring the owner/operator should be required to monitor for hazardous constituents found in the ground water (e.g., as a result of Appendix IX monitoring) at least semi-annually, at the point of compliance. This monitoring is required during the compliance monitoring program in Subpart F.

RECOMMENDATION: Add to Section 66264.99(e)(2) the requirement that the list of monitoring parameters include all hazardous constituents that have been detected in the ground water."

Comment Response: This change has been made to the proposed regulation as suggested.

Comment A141 - Section 66264.99(e)(5) and (e)(7)

Commentor A - Environmental Protection Agency Region IX

Comment: "These paragraphs should contain requirements for what is to become of the data gathered on hazardous constituents at the point of compliance semi-annually during evaluation monitoring. (The requirement for gathering this data should be added to the evaluation monitoring program. See comment on Section 66264.92(e)(2).) Section 264.99(d) of Subpart F requires the statistical test to be performed on the data gathered. In Subpart F, the statistical test accomplishes two goals. First it triggers corrective action at the facility. (See 264.91(a)(2) and 264.99(h) (2).) Second, it identifies which hazardous constituents exceed the ground water protection standard, and therefore which hazardous constituents need to be addressed in corrective action in order to ensure that the facility is in compliance with the standard. (See 264.100(a) .) In Title 22, performance of the statistical test during evaluation monitoring to trigger corrective action is not necessary, since corrective action is triggered earlier through the Statistically significant increase during detection monitoring. However, performance of the statistical test during evaluation

monitoring is necessary to determine which of the hazardous constituents found in the ground water must be addressed in corrective action. It is also important that Title 22 regulations require that the data gathered on hazardous constituents at the point of compliance during evaluation monitoring be used in the submittal of appropriate changes to the application for permit modification required in Section 66264.99(e)(7).

RECOMMENDATION: Add to Section 66264.99(e)(5) requirements for performing the statistical test on data on hazardous constituents gathered semi-annually at the point of compliance. Add to Section 66264.99(e)(7) the requirement to consider data on hazardous constituents gathered semi-annually at the point of compliance when updating the proposed corrective action plan."

Comment Response: The requirement to perform at least semi-annual, statistical analysis on the monitoring data collected during evaluation monitoring has been added to Section 66264.99(e)(3). (This includes the concentrations of hazardous constituents at the point of compliance.) Section 66264.99(e)(7) requires the owner or operator to consider all data (including data on hazardous constituents at the point of compliance), collected pursuant to subsection 66264.99(e) when updating proposed corrective action plans.

Comment A142 - Section 66264.99(e)(7)

Commentor A - Environmental Protection Agency Region IX

Comment: "The application for permit modification required in this paragraph should be submitted within 90 days of when the owner or operator determines that the plan for corrective action is insufficient. The corresponding requirement in Subpart F is found in 264.100(h).

RECOMMENDATION: The paragraph should read '. . .the owner/operator shall submit for approval by the Department, within 90 days of making the determination, any appropriate changes...'."

Comment Response: This change has been made to the proposed regulation as suggested.

Comment A143 - Section 66264.99(f)

Commentor A - Environmental Protection Agency Region IX

Comment: "This paragraph should not allow the return to detection monitoring during evaluation monitoring. In Subpart F, after a statistically significant increase is observed in detection monitoring, the owner/operator is afforded the opportunity to demonstrate that the increase is not due to a release from the regulated unit (264.98(g)(6)). If the owner/operator successfully

demonstrates this, then the facility may return to detection monitoring. However, the owner/operator must make the demonstration within 90 days after the statistically significant increase in detection monitoring; there is no further opportunity after this time-frame for the facility to return to detection monitoring. Section 66264.99(f) of Title 22 would allow the owner/operator to advance, at any time during the evaluation monitoring program, a demonstration that the observed increase was not due to a release from a regulated unit, and if the owner/operator makes a successful demonstration, then the facility may return to detection monitoring. A proposed change has been made to Subpart F (Federal Register notice of July 26, 1988) to revise Subpart F with a requirement similar to that which is being advanced for Title 22. EPA recognizes that in proposing Section 66264.99(f), the Department is anticipating the finalization of the proposed change to Subpart F. It is possible that the provision in Section 66264.99(f) will be equivalent to the new Federal regulations when the proposed change to Subpart F has been made final. It is not possible to predict when, or in what form, the revisions to Subpart F will be finalized. Therefore, it is not possible at this time to comment on the equivalency of the proposed Section 66264.99(f) of Title 22 Vis-a-Vis the future revisions to Subpart F. At any rate, Title 22 as proposed is not equivalent to current Subpart F on this issue. Whether or not Title 22 becomes equivalent with Subpart F by virtue of future revisions to Subpart F will be dependent on the nature and timing of those revisions.

RECOMMENDATION: Either a) the option for a demonstration during evaluation monitoring (Section 66264.99(f)) should be removed, or b) the facility should be required to return to a 'modified' detection monitoring program, as discussed in the comment on Sections 66264.98(n) and 66264.100(i)(3), if the demonstration is successful."

Comment Response: This change has not been made to the proposed regulations because: 1) The Department does not believe that it is reasonable to require annual Appendix IX analysis (at considerable expense) for a regulated unit that has been demonstrated <u>not</u> to have had a release; and 2) The Department and technical staff with EPA in Washington, D.C. are hopeful that the proposed changes to Subpart F will be final at the time the Department submits its application for authorization, thereby removing the problem of equivalency with the federal requirements.

Comment A144 - Section 66264.99(g)

Commentor A - Environmental Protection Agency Region IX

Comment: "This paragraph should require the owner/operator to institute interim corrective action measures necessary to protect human health or the environment whenever the water quality protection standard has been exceeded. Subpart F requires the

owner/operator to institute corrective action when the ground water protection standard is exceeded 66264.91(a)(2). In Section 66264.91(a)(4), Title 22 requires the owner/operator to institute corrective action when the Department approves the proposed corrective action program. This is consistent with the Subpart F application approval process if the comment on sections 66264.99(b), (c), and (d) are addressed However, since the permit modification for corrective action will normally be approved some considerable time after a statistically significant increase is observed, it is conceivable that interim corrective action measures would be necessary to protect human health or the environment. The responsibility for instituting such interim measures is put on the owner/operator in Subpart F in Section 66264.91(a)(2) and should likewise be put on the owner/operator in Title 22. This is especially important in the event of a catastrophic occurrence in which immediate action would be appropriate.

RECOMMENDATION: Revise the paragraph to read: 'The owner/operator shall institute interim corrective action measures necessary to protect human health or the environment whenever the water quality protection standard is exceeded'."

Comment Response: This change has not been incorporated into the proposed regulations because the Department does not wish to allow the owner or operator of a facility to institute corrective action measures without prior approval of the Department. Each facility must have pre-approved contingency plans to deal with catastrophic events. The purpose of this section is to emphasize the authority of the Department to require interim corrective action measures, not to give the owner or operator the authority to independently implement corrective actions.

Comment A145 - Section 66264.100(e)(2) and 66264.801(c)

Commentor A - Environmental Protection Agency Region IX

Comment: "A qualification describing when the owner/operator corrective action measures for releases outside the facility boundary should be added to these paragraphs. Subpart F (in Sections 264.100(e)(2) and 264.101(C)) requires such corrective action measures unless the owner/operator demonstrates that he was unable to obtain the necessary permission to undertake such actions. EPA understands the Department's reasons for not including the language described, but without that language, Title 22 would in some cases be requiring the owner/operator to perform work that he has no legal authority to perform. The Department may not not be able to enforce that requirement.

RECOMMENDATION: Add language equivalent to that found in Subpart F (Sections 264.100(e)(2) and 264.801(c)) to Sections 66264.100(e)(2) and 66264.801(c)."

Comment Response: The recommended changes have not been incorporated into the proposed regulations. Subsection 66264.100(e) has however been deleted and subsection (c) has been rewritten to clarify the requirement that the owner or operator must perform corrective action "throughout the zone affected by the release". As specified in H&SC Section 25200.10, when establishing permit conditions the Department has the authority to consider the owner or operator's inability to obtain permission to take action offsite. However, pursuant to H&SC Sections 25187(a) and 25200(a), the Department has the authority to require corrective action beyond the facility boundary.

Comment A146 - Section 66264.100(f)

Commentor A - Environmental Protection Agency Region IX

Comment: "The phrase 'reasonable period of time considering the extent of contamination' originally found in Section 264.100(e)(3) of Subpart F should not be deleted in Title 22. Although this is an ambiguous requirement in Subpart F, deleting it would imply that under Title 22, corrective action measures are not required to be initiated and completed 'within a reasonable period of time.' With the deletion, Title 22 is potentially less stringent than Subpart F in intent.

RECOMMENDATION: Insert the phrase 'reasonable period of time considering the extent of contamination' in this paragraph."

Comment Response: This change has not been made to the proposed regulations because, as suggested in the comment, the requirement to initiate and complete corrective action "within a reasonable period of time" is ambiguous. Legal staff feel strongly that the proposed language, "within a period of time specified by the Department in the facility permit", will be more easily enforced than the existing federal requirement.

Comment A147 - Section 66265.95(a)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "In the tenth line of this paragraph, reference should be made to Section 66265.97 instead of 66264.97."

Comment Response: This change has been made to the proposed regulation as suggested.

Comment A147(B) - Section 66265.97(e)(10)(A)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "In the first line of this paragraph, 'determining' is misspelled."

Comment Response: This change has been made to the proposed regulation as suggested.

Comment A147(C) - Section 66265.98(g)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "In the third line of this paragraph, 'or' should be changed to 'of' to read 'constituents of concern'."

Comment Response: This change has been made to the proposed regulation as suggested.

Comment A148 - Chapter 15 Article 6

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "In the Statement of Reasons to Title 22 interim status ground water monitoring regulations, the Department states that where changes are made to Title 22 ground water monitoring regulations for permitted facilities (Sections 66264.90 through 66264.100) in response to comments received during the public comment period, parallel changes will be made to the interim status regulations (Sections 66265.90 through 66264.99) in order to keep the two sets of regulations consistent. While EPA supports this approach for purposes of consistency, EPA does not believe such revisions to Title 22 interim status regulations will, in most cases, be necessary for purposes of equivalency with the federal interim status regulations (Sections 265.90 through 265.94). Therefore, EPA will not repeat for the Title 22 interim status regulations the comments already made for the Title 22 permitted facility regulations. EPA is making separate comments on equivalency issues in the Title 22 interim status ground water monitoring regulations. Revisions for consistency which the Department makes to the interim status regulations should not take precedence over revisions which the Department should make to those regulations in response to an equivalency comment made specifically on the interim status regulations.

RECOMMENDATION: Revise Title 22 ground water monitoring interim status regulations (Sections 66265.90 through 66265.99) so that they are consistent with the revised Title 22 ground water monitoring regulations for permitted facilities, where appropriate, as discussed above."

Comment Response: This change has been made to the proposed regulation as suggested.

Comment A149 - Section 66265.90(a)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "Title 22 uses the term 'release' throughout the interim status ground water monitoring regulations without defining it. Subpart F interim status regulations do not use the term 'release.' Instead, Subpart F makes reference (using different wording in different instances) to hazardous constituents from the facility that have entered the uppermost aquifer (e.g., 265.91(a)(2) and 265.93 (d)(7)). Title 22 regulations should define 'release' so that it is clear that the use of the term is equivalent with the concept of hazardous constituents from the waste management area that have entered the ground water.

RECOMMENDATION: A definition of 'release' should be added either to Section 66265.90(a), where the term first appears in Title 22 interim status ground water regulations, or a definition of 'release' should appear in Section 66260.10."

Comment Response: The definition of "release" has not been added to the proposed regulation because the Department believes that the dictionary definition for the term is sufficient. Clearly the Department does not want to limit the definition of release to include only hazardous constituents from the regulated unit that have entered ground water because, under the proposed regulations, the Department will regulate releases of all constituents of concern to ground water, surface water, and the unsaturated zone. For the sake of clarity, Section 66264.90(a) has been modified to clearly require the owner or operator to respond to releases "to ground water, surface water, or the unsaturated zone."

Comment A150 - Section 66265.90(b)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "This paragraph should not refer to the final administrative disposition of a permit as the point when the interim status ground water regulations cease to apply. Instead, it should state that the interim status requirements apply at a facility until either a permit is issued, or until applicable post-closure responsibilities are fulfilled. This is equivalent to the language in Section 265.90(b) of Subpart F, and would also be consistent with the language in Section 66265.1(a) of Title 22. In the unlikely event that the final administrative disposition is a permit denial, Section 66265.90(b) may be less stringent than Section 265.90(b).

RECOMMENDATION: Revise Section 66265.90(b) of Title 22 so that it is equivalent with Section 265.90(b) of Subpart F, and so that it is consistent with Section 66265.1(a) of Title 22. (Note that there is similar potential problem with wording in Sections 66265.99(e) and (e)(7): the wording in these sections should be revised as well.)"

Comment Response: This change has been made to the proposed regulation as suggested.

Comment A151 - Section 66265.91(b)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "The owner/operator should be required to maintain the original water quality sampling and analysis plan at the facility, until it is superseded by revisions. A requirement for maintaining the plan at the facility is found in Section 265.92(a) of Subpart F. As written, Title 22 requires the owner/operator to keep only revisions to the plan in the facility operating record.

RECOMMENDATION: Revise Section 66265.91(b) to require the owner/operator to keep the current copy of the water quality sampling and analysis plan in the operating record at the facility."

Comment Response: Section 66264.91(b) contains a requirement that the owner or operator "maintain a current version of the water quality sampling and analysis plan in the operating record at the facility."

Comment A152 - Section 66265.91(b)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "This paragraph should require the owner/operator to modify the water quality sampling and analysis plan as necessary to protect human health or the environment. By stating in the last sentence that the Department shall require the owner/operator to modify the plan, the regulations are not self-implementing. It is desirable for all or the interim status regulations to be self-implementing.

RECOMMENDATION: The last sentence in Section 66265.91(b) should read: 'The owner or operator shall modify the water quality sampling and analysis plan as necessary to protect human health and the environment.' (Note that Section 66265.91(b) could also state that, in addition to the requirement placed directly upon the owner or operator, the Department shall require the owner or operator to modify the water quality sampling and analysis plans as necessary to protect human health or the environment.)"

Comment A154 - Section 66265.97

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "Title 22 interim status ground water quality regulations should require the owner/operator of any newly regulated facility to establish background for certain parameters. Subpart F interim status regulations require setting background for the following parameters: a) twenty-one primary drinking water parameters listed in Appendix III of Section 265, b) six ground water quality parameters listed in Section 265.92(b)(2), and c) four indicator parameters listed in Section 265.92(b)(3). Title 22 should require that background for these parameters be established based on quarterly sampling conducted in the first year after a facility becomes subject to regulation for management of hazardous waste.

RECOMMENDATION: Add requirements to Section 66265.97 of Title 22 equivalent to those in Sections 265.92(b) and (c) of Subpart F for setting background for specific parameters."

Comment Response: Section 66265.97(e)(16) has been added to the proposed regulations requiring that an owner or operator establish background values for the constituents addressed in this comment within 12 months of the effective date of these regulations unless the owner or operator has previously established background values for those constituents pursuant to other state or federal regulations.

Comment A155 - Section 66265.97(b)(1)(A) and 66265.97(b)(2)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "It should be stated that at least one upgradient well is required in the monitoring system. It is implied in Section 66265.97(b)(2) that at least one upgradient well is required, and that other (non-upgradient) background wells may also be used, to establish background water quality. Subpart F (Section 265.91(a)(1)) requires a minimum of one background well placed upgradient from the regulated unit. Therefore, Title 22 should explicitly require a minimum of one background well placed upgradient from the regulated unit. This requirement should be self-implementing: the owner/operator should be required to establish this well without waiting for Department approval. Once Section 66265.97(b)(2) is revised as suggested above, the question of whether or not additional background wells which are not upgradient are allowed is no longer a equivalency issue.

RECOMMENDATION: Explicitly state in Section 66265.97(b)(2) that at least one upgradient background well must be established for interim status ground water monitoring systems. EPA would also like to point out that in Section 66265.97(b)(2), the placement of non-upgradient background wells is not self-implementing, but would

require Department approval. The Department may want to consider making the provision for placement of non-upgradient wells a self-implementing provision."

Comment Response: These changes have been made to the proposed regulation as suggested.

Comment A156 - Section 66265.97(b)(1)(A) and 66265.97(b)(2)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "It should be stated that at least one upgradient well is required in the monitoring system. It is implied in Section 66265.97(b)(2) that at least one upgradient well is required, and that other (non-upgradient) background wells may also be used, to establish background water quality. Subpart F (Section 265.91(a)(1)) requires a minimum of one background well placed upgradient from the regulated unit. Therefore, Title 22 should explicitly require a minimum of one background well placed upgradient from the regulated unit. This requirement should be self-implementing: the owner/operator should be required to establish this well without waiting for Department approval. Once Section 66265.97(b)(2) is revised as suggested above, the question of whether or not additional background wells which are not upgradient are allowed is no longer a equivalency issue. However, EPA would like to point out that in Section 66265.97(b)(2), the placement of non-upgradient background wells is not self-implementing, but would require Department approval. Although this is not necessary for equivalency, the Department may want to consider making the provision for placement of non-upgradient background wells a self-implementing provision.

RECOMMENDATION: Explicitly state in Section 66265.97(b)(1)(A) or in Section 66265.97(b)(2) that at least one upgradient background well must be established for interim status ground water monitoring systems."

Comment response: This change has been made to the proposed regulation as suggested.

Comment A157 - Section 66265.97(b)(1)(B)1. and (b)(1)(C)1.

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "These two paragraphs should require a minimum of three wells installed to yield samples that represent the quality of ground water passing the point of compliance. A minimum of three wells hydraulically downgradient at the limit of the waste management area is required in Subpart F (Section 265.91(a)(2)).

RECOMMENDATION: Sections 66265.97(b)(1)(B)1. and 66265.97(b)(1)(C)1. should begin: 'A sufficient number of monitoring points (at least three) stalled at appropriate locations...' Section 66265.97(b)(1)(C)1. should require the wells to be placed to yield samples that represent the quality of ground water passing the point of compliance."

Comment Response: These changes have been made to the proposed regulation as suggested.

Comment A158 - Section 66265.97(e)(7), (e)(8), and (e)(9)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "The Title 22 interim status ground water monitoring regulations do not require the use of the Student's t-test for the statistical comparison of ground water data against background values. Section 265.93(b) of Subpart F does require the Student's t-test. However, EPA has previously acknowledged concerns (53 Fed. Reg. 39720 (October 11, 1988)) that the Student's t-test may not always be appropriate to ground water monitoring data. The statistical tests that are presented in Section 66265.97(e)(8) are those which EPA has already promulgated for use at permitted facilities. Given that these statistical tests are considered by EPA to be more accurate than the Student's t-test in identifying statistically significant increases, it is appropriate for Title 22 to include the tests in its interim status regulations. However, in some instances the Student's t-test may be appropriate for evaluating ground water monitoring data. For this reason, Title 22 should also include the Student's t-test as one of the options which the facility may choose. In this way, Title 22 will remain consistent with Subpart F interim status regulations.

RECOMMENDATION: List the Student's t-test as an option in Section 66265.97(e)(8)(E), and retain the option for 'another statistical test method' in new Section 66265.97(e)(8)(F). In addition, a description of the Student's t-test (similar to that in Appendix ' IV of Section 265) should be placed in the Title 22 interim status regulations."

Comment Response: These changes have not been made to the proposed regulations because the use of the student's t-test is already allowed under Section 66265.97(e)(8)(E) as "another statistical method". The Department, through these proposed regulations, is seeking to minimize the differences between the regulations for interim status and permitted facilities. The inclusion of unnecessary language about the use of the student's t-test could be misinterpreted as an endorsement of that particular method of statistical analysis for interim status facilities. Similarly, the Department believes that the inclusion of a description of the student's t-test in the appendix to this chapter is neither necessary nor wise. Descriptions of statistical methods are to be found in standard statistical text books and EPA guidance documents.

Comment A159 - Section 66265.97(e)(8)(E)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "Title 22 interim status ground water monitoring regulations allow the owner/operator to propose additional statistical methods beyond what is specified in the regulations as potentially appropriate methods. Subpart F interim status regulations do not allow additional statistical tests to be used beyond what is listed specifically in the regulations. In order to ensure that the opportunity for choosing an alternative statistical method is not abused by the regulated community, Section 66265.97(e)(8)(E) should make the use of an alternative method contingent upon the owner/operator's documentation that the method chosen is appropriate.

RECOMMENDATION: Section 66265.97(e)(8)(E) should read: 'Another statistical test method, if sufficient documentation is maintained in the facility operating record to support selection of the method.'"

Comment Response: This section has been modified as follows: "(E) Another statistical test method <u>if sufficient documentation to support selection of the method is submitted to the Department and is maintained in the facility operating record.</u>..."

Comment A160 - Section 66265.97(e)(12)(B)2.

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "Title 22 interim status ground water monitoring regulations allow the owner/operator to propose additional sampling methods beyond what is specified in the regulations as potentially appropriate methods. Subpart F interim status regulations do not allow additional sampling methods to be used beyond what is listed specifically in the regulations. In order to ensure that the opportunity for choosing an alternative sampling method is not abused by the regulated community, Section 66265.97(e)(12)(B)2. should make the use of an alternative method contingent upon the owner/operator's documentation that the method chosen is appropriate.

RECOMMENDATION: Section 66265.97(e)(12)(B)2. should read: 'An alternate sampling method, if sufficient documentation is maintained in the facility operating record to support selection of the method.'"

Comment Response: This section has been modified as follows: "2. An alternate sampling method <u>if sufficient documentation is submitted to the Department and is maintained in the facility operating record to support selection of the method</u>."

Comment A161 - Section 66265.97(e)(15)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "This paragraph should require the owner/operator to evaluate, at least annually, the ground water elevation data to determine whether the requirements for locating monitoring wells continue to be satisfied. The owner/operator should then be required to immediately modify the ground water monitoring system if the evaluation shows that requirements for locating monitoring wells are no longer satisfied. These requirements are found in Section 265.93(f) of Subpart F.

RECOMMENDATION: Add requirements to Section 66265.97(e)(15) which are equivalent to those in Section 265.93(f) of Subpart F, as discussed above."

Comment Response: This section has been modified as follows: "... in the wells. <u>The owner or operator shall use this data at least annually to determine whether the requirements of Section 66265.97(b)(1) are satisfied. If the evaluation shows that the requirements of Section 66265.97(b)(1) are not satisfied the owner or operator shall, as soon as technically feasible, modify the number, location, or depth of the ground water monitoring wells as necessary to bring the ground water monitoring system into compliance with the requirements of this section.</u> "

Comment A162 - Section 66265.97(e)(16)

Commentor A - Environmental Protection Agency Region IX

Comment Summary: "The record-keeping and reporting requirements in Title 22 interim status ground water regulations should be more specific. Title 22 record-keeping and reporting requirements during the detection monitoring program should be equivalent to the Subpart F record-keeping and reporting requirements in Section 265.94(a)(1) and Section 265.94(a)(2), respectively. Title 22 record-keeping and reporting requirements during the evaluation monitoring program should be equivalent to the Subpart F record-keeping and reporting requirements in Section 265.94(b)(1) and Section 265.94(b)(2), respectively.

RECOMMENDATION: In Section 66265.97(e)(16), specify the following record-keeping and reporting requirements for the detection monitoring program: a) records must be kept of background samples and analyses, ground water quality samples and analyses, ground water surface elevations, and statistical test results, b) report must be made or the results from the first year's quarterly sampling of Appendix III parameters, within 15 days after completing each quarterly analysis, c) report must be made of the concentrations of indicator parameters and the results of the statistical test by March 1 of each year, d) report must be made of any significant difference from initial background levels by March 1 of each year,

and e) report must be made of ground water surface elevation data by March 1 of each year. (Note that in reporting differences in background values, the owner/operator should be required to report the difference if the owner/operator has chosen to set a background value pursuant to 66265.97(e)(11) (A), and if the owner/operator has chosen to establish a procedure for setting background pursuant to Section 66265.97(e)(11)(B).) In Section 66265.97(e)(16), specify the following record-keeping and reporting requirements for the evaluation monitoring program: a) records must be kept of all analyses and evaluations specified in the evaluation monitoring plan, and b) report must be made of the results of the evaluation monitoring program (including but not limited to the calculated or measured rate of migration of hazardous constituents in the ground water) by March 1 of each year. For all record-keeping requirements, the owner/operator should be required to keep the records throughout the active life of the facility, and throughout the post-closure care period as well."

Comment Response: This section has been modified as follows: "~~(16)~~ (17) Water quality monitoring data collected in accordance with this article, including actual concentrations or values of all constituents and parameters, all background water quality data, all statistical evaluations, all water level data, and all data used to derive the ground water flow rate and direction, shall be maintained in the facility operating record throughout the active life of the regulated unit and the post-closure care period. The owner or operator shall submit this data to the Department at least annually. This information shall be submitted no later than March 1 following each calendar year. The Department may require more frequent reporting where necessary to protect human health or the environment." (Note: The section referenced by this comment has been moved and renumbered as Section 66265.97(e)(17).)

The requirement to submit a report on the results of the evaluation monitoring program by March 1 of each calendar year has been added as section 66265.99(e)(8).

Comment A163 - section 66264.280 (a) (6)

Commentor - EPA Region IX

Comment summary: The proposed regulation should require unsaturated zone monitoring for a period of at least 90 days after the last application of waste to the treatment zone.

Comment response: This comment will be accomodated by rewritting Section 66264.280 (a) (6) to read: "Continue unsaturated zone monitoring in compliance with section 66264.278, except that soil-pore liquid monitoring may be terminated after the waste added to the treatment zone has been shown to the satisfaction of the Department to have been completely degraded, immobilized or transformed, but in no event can monitoring be discontinued in less

than 90 days after the last application of waste to the treatment zone."

Comment A164 - section 66264.301 (e) (2) (A) (2)

Commentor - EPA Region IX

Comment summary: The commentor points out that the definition of "underground source of drinking water" found in the proposed Title 22 regulations is incorrect and does not match the corresponding federal definition. Provision (b) of the definition should read "Which is not an exempted aquifer", rather than "Which is an exempted aquifer".

Comment response: The definition of "underground source of drinking water" found in section 66260.10 will be changed to include the word "not".

Comment A165 - section 66264.301 (e) (2) (A) (3)

Commentor - EPA Region IX

Comment summary: The commentor recommends that for clarity the regulation should reference the State's statutory equivalent to Resource Conservation and Recovery Act section 3005 (c).

Comment response: This section will be clarified by adding the phrase "with hazardous waste facility permits", to the end of this requirement.

Comment A166 - section 66264.312 (a)

Commentor - EPA Region IX

Comment summary: The commentor points out a typographical error in which the word "in" should be "is".

Comment response: The typographical error will be corrected.

Comment A167 - section 66264.314 (a)

Commentor - EPA Region IX

Comment summary: The commentor believes that by deleting the prefix "non" from non-containerized that the proposed regulation would not prohibit the disposal of non-containerized liquid hazardous wastes.

Comment response: The federal text which was deleted from section 66264.314 (d) (1) has been reinserted. The prefix "non" has been added back into the phrase "non-containerized waste". These changes make the proposed state regulations identical to the existing federal regulations with the exception of the effective date and the changes made to the free liquids determination (paint filter test).

Comment A168 - section 66265.301 (a)

Commentor - EPA Region IX

Comment summary: The commentor states that for consistency the regulation should cite 66264.301 (c) rather than 66264.301 (b).

Comment response: This comment will be accomodated by changing the citation to read 66264.301 (c).

Comment A169 - section 66265.301 (d) (2) (A) (2)

Commentor - EPA Region IX

Comment summary: The commentor points out that the definition of "underground source of drinking water" found in the proposed Title 22 regulations is incorrect and does not match the corresponding federal definition. Provision (b) of the definition should read "Which is <u>not</u> an exempted aquifer", rather than "Which is an exempted aquifer".

Comment response: See response to Comment A164.

Comment A170 - section 66265.301 (d) (2) (A) (3)

Commentor - EPA Region IX

Comment summary: The commentor recommends that for clarity the regulation should reference the State's statutory equivalent to Resource Conservation and Recovery Act section 3005 (c).

Comment response: See response to Comment A165.

Comment A171 - section 66264.314 (b)

Commentor - EPA Region IX

Comment summary: The commentor requests documentation that the changes made to EPA Method 9095 are, at a minimum, as stringent as the method used in the federal program.

Comment response: The changes made to EPA Method 9095 are twofold:

1) The sample size is specified at 100 milliliters rather than 100 milliliters or 100 grams. This does not affect the stringency of the test in any way.

2) The pore size of the conical filter is specified at 400 microns rather than 60 mesh. According to the CRC Handbook of Chemistry and Physics 57th Edition, pg. F-158 (for other editions look in index under Sieves, standard test), the nominal opening size of a 60 mesh sieve (or filter) is 250 microns. A 400 micron filter therefore has larger openings, and is more likely to let fluids pass through. Because a waste is considered to contain free liquids if any portion of the waste passes through the filter, and since fluids are more likely to pass through a 400 micron opening than a 250 micron opening, the test as modified in section 66264.314 is more stringent than the corresponding federal test.

Comment: A172 - 66264.340(a)(2), 66265.340(a)(2)

Commentor A - EPA Region IX

Synopsis of Comment: The two citations above are identical and each is currently written in such a way that it may be unclear. The citations currently read: "Owners or operators who burn waste in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces."

Recommendation: In both cases, delete the words: "in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces".

Response to comment: The Department will accommodate this comment. Because California regulates persons burning hazardous waste for energy recovery in the same manner as persons burning hazardous waste for destruction (incineration), those burning hazardous waste for any purpose are regulated under the incinerator rules of Articles 15 of Chapters 14 and 15 of the proposed regulations. The phrase in question is therefore unnecessary in this regulation. The suggested change is being made.

Comment: A173 - Sections 66264.341(b), 66265.341

Commentor A - EPA Region IX

Synopsis of Comment: The above sections are not consistent with DHS's intention to keep the regulations from being gender specific.

Recommendations: The above mentioned sections should be rewritten without use of the words "he", "him", or "his".

Response to comment: The Department is accommodating this comment. It is the intention of the Department to keep these regulations gender neutral. The gender specific pronouns will be replaced with the phrase "that owner or operator's".

Comment: A174 - 66264.340(b)(1)(D), 66264.342(a), 66265.341(d)

Commentor A - EPA Region IX

Synopsis of Comment: The sections referred to above may be unclear the way they are currently written.

Recommendations:

66264.340(b)(1)(D) - The line should read "...by section 66261.33(a)(1),...".

66264.342(a) - The words "feed waste" should be changed to "waste feed" in order to be consistent with the rest of the document.

66265.341(d) - This line should not be labeled with a "(d)" heading because it is not part of the list of items that the analysis should determine.

Response to comment: The Department is accommodating this comment. the regulations are being modified as follows:

In Section 66264.340(b)(1)(D), the reference to Section 66261.23(1) is being corrected to Section 66261.23(a)(1)

In Section 66264.342(a), the words "feed waste" are being replaced with "waste feed" for consistency with the remainder to the document.

In Section 66265.341, the subsections are being renumbered. The introductory language is being labeled subsection (a) and the list of items to be determined by the analysis set forth by this section are being renumbered as (1), (2), and (3). Because the last paragraph establishes a regulatory requirement instead of an item for the preceding list, it is being renumbered as (b).

Comment: A175 - 66265.340(a), 66265.352(a)

Commentor A - EPA Region IX

Synopsis of Comment: The sections above refer to a "subpart" of the regulations rather than an "article".

Recommendations: Replace the word "subpart" with the word "article".

Response to comment: The Department is accommodating this comment. In changing the federal text to develop these regulations, subparts became articles consistent with the format of the California Code of Regulations. The two references to "subpart" above are being changed to refer to "article".

Comment A176 - Section 66264.601 (b) (3)

Commentor A - Environmental Protection Agency

Comment summary: Referenced section considers "topography of the land and unit" instead of "topography of the land around the unit".

Comment response: This comment was accommodated. The word "and" in the above phrase has been changed to "around".

Comment A177 - Section 66264.601 (c) (5)

Commentor A - Environmental Protection Agency

Comment summary: Above referenced section uses "other source of pollution and contamination" instead of "other source of contamination".

Comment response: This comment was not accommodated. The change of phrase as stated in the comment summary was necessary to conform with the changes that have been made in Chapter 14, Article 6 of these proposed regulations pertaining to "water quality monitoring and response programs for permitted facilities. The changes made in Chapter 14, Article 6 were in concurrence with the EPA, the State Water Resources Control Board, and the DHS.

Comment A178 - Section 66264, Appendix IV

Commentor A - Environmental Protection Agency Region IX

Comment: "Prior to October 11, 1988, this appendix set forth the statistical method which had to be used to evaluate the presence or increase in contamination of ground water (Cochran's Approximation

to the Behrens-Fisher Students' t-test). On October 11, 1988, the federal government promulgated four 'more appropriate' statistical methodologies (i.e., Analysis of Variance, Tolerance Intervals, Prediction Intervals, and Control Charts) for ground water monitoring.

The proposed state regulations have deleted this appendix on the ground that the federal government 'erroneously' failed to delete it when the more appropriate statistical methodologies were promulgated.

RECOMMENDATION: The Department may wish to include this appendix if the regulations (as modified) allow this test as an option."

Comment Response: This change has not been made to the proposed regulations because the Department does not wish to include an appendix that is not referenced and that describes a statistical method that is not even mentioned in the regulations. The statistical methods specified in the regulations can be found in any standard statistical text.

Comment A179 - Section 66266.5(a)(3)

Commentor A - EPA Region IX

Comment summary: "This subsection gives an exemption to resource recovery facilities regarding the wording for warning signs set forth in section 66264.14, provided that the facility uses 'warning signs with wording which shall be at least equivalent to <u>the corresponding wording required by the USEPA pursuant to Subtitle C of RCRA'.</u> (emphasis added) [sic] Both the generic reference to 'Subtitle C of RCRA', and the requirement to be 'at least equivalent to' are unclear.

The applicable wording in section 66264.14 (c) is 'Danger Hazardous Waste Area--Unauthorized Personnel Keep Out'. Presumably, the Subtitle C reference is to the wording in 40 CFR [section] 264.14(c): 'Danger--Unauthorized Personnel Keep Out'.

Recommendation: Add the specific wording 'Danger--Unauthorized Personnel Keep Out' to the second sentence, e.g.: 'An operator whose facility qualifies for this exemption shall use warning signs with wording which states, at a minimum, 'Danger--Unauthorized Personnel Keep Out'.'"

Comment response: This comment was accommodated as recommended.

Comment 180 - Section 66266.7(b)(2)(E)

Commentor A - EPA Region IX

Comment summary: "The second half of this sentence [part of section 66266.7(b)(2)(E)] (following 'unless') is ambiguous. Does this mean that if a facility has or would otherwise be required to get a hazardous waste facility permit pursuant to Chapter 20, then the facility is thereby ineligible for a Series 'A' Resource Recovery Facility permit [sic]? Or does this give the facility the option to choose between obtaining either a Chapter 20 permit or a permit under Section [sic] 66266.7? EPA believes that the latter interpretation would not meet the requirment [sic] of equivalency. Recommendation: Add language to clarify that, if a facility has or is required to obtain a hazardous waste facility permit, then it is ineligible for a permit under this section."

Comment response: The comment addresses a regulation (i.e., Title 22, CCR, section 66806(b)(2)(E)) that has been part of existing state regulations for more than four years. The subject section, as written, establishes requirements for obtaining a Series 'A' Resource Recovery Facility Permit (SARRFP). The SARRFP is obtained by at least the same methods as a RCRA hazardous waste facility permit {i.e., both Part A (complete) and Part B (complete) of the permit application are required, and the permit application is processed in the same manner [proposed Sections 66266.7(a)(1) and (d)]}. The SARRFP itself is at least the same as a RCRA hazardous waste facility permit (i.e., no exemptions from permit requirements are provided). The SARRFP application must include additional information (i.e., not required for a RCRA hazardous waste facility permit) to substantiate that the facility qualifies as a resource recovery facility [proposed section 66266.7(c)]. Also, the SARRFP application and the SARRFP must address the recycling process itself, not just the storage (if any) prior to the recycling process {i.e., RCRA hazardous waste facility permits generally cannot address the recycling process itself [40 CFR section 261.6(c)(1)]}. Therefore, the SARRFP, and the processes for obtaining and issuing it, are at least RCRA equivalent.

The operator of a resource recovery facility which manages RCRA listed and/or characteristic recyclable hazardous wastes is eligible only for a RCRA-equivalent SARRFP in lieu of a hazardous waste facility permit. Proposed sections 66266.8(a) and 66266.9(a) specifically exclude from eligibility for the less stringent Series B and C resource recovery facility permits (SBRRFP and SCRRFP, respectively), operators of facilities which manage RCRA listed and/or characteristic hazardous wastes. Similarly, the operator of a facility which manages recyclable hazardous wastes in certain ways (whether RCRA listed and/or characteristic hazardous wastes or not) is eligible only for a SARRFP in lieu of a hazardous waste facility permit. For example, proposed sections 66266.8(a) and 66266.9(a) specifically exclude from eligibility for SBRRFPs and SCRRFPs (respectively), operators of facilities which burn recyclable hazardous wastes for fuel or apply them to land.

Therefore, such facility operators can qualify only for the RCRA-equivalent SARRFP.

The subject of the commentor's concern, part of proposed section 66266.7(b)(2)(E), addresses the issue of multipurpose facilities whose predominant, but not exclusive, activity is the recycling of hazardous wastes (proposed section 66266.10 and the definition of "resource recovery facility" in proposed section 66260.10 establish criteria for determining whether the predominant activity is recycling). Since the SARRFP is at least a RCRA-equivalent permit in all applicable respects as discussed above, the SARRFP can thoroughly address the primary (recycling) and any secondary (e.g., storage of hazardous wastes destined for offsite disposal) hazardous waste activities involving RCRA listed and/or characteristic hazardous wastes and occurring at the same facility. Therefore, it makes no difference whether the owner/operator of such a multipurpose facility obtains only a SARRFP for the entire facility, or only a hazardous waste facility permit for the entire facility, or two or more permits for the facility: a SARRFP for the recycling activity and one or more hazardous waste facility permits for all other hazardous waste activities conducted at that facility. All of these permits, or combination of permits, are RCRA-equivalent, "Chapter 20" permits.

Based on the above discussion, the commentor's concern is unfounded. There is no way that proposed section 66266.7(b)(2)(E) can allow the Department to regulate a resource recovery facility, or a multipurpose resource recovery facility, under a permit, or combination of permits, which is not at least RCRA-equivalent.

Comment 181 - Section 66266.7(c)(1) and (2)

Commentor A - EPA Region IX

Comment summary: "There is a potential ambiguity between the requirements of subsection (c)(1) [of section 66266.7], for 'a statement that the person and the facility <u>meet the criteria</u>....', and subsection (c)(2) [of section 66266.7], for 'evidence and written assurance that the person and the facility <u>will meet</u>. [sic] the criteria....' (emphasis added) [sic] In contrast to [subsection] (c)(1), the [subsection] (c)(2) wording could be read to imply that the criteria may not be met until some future unspecified time. Recommendation: Add to [subsection] (c)(2): 'Evidence and written assurance that the person and the facility will <u>continue to</u> meet the criteria....'"

Comment response: The comment was accommodated by deleting the word "will" from proposed section 66266.7(c)(2) instead of adding the words "continue to" that the commentor recommended. The commentor's words would not conform grammatically if the subject facility were a new facility. A new facility generally has not operated, so it cannot "continue to" operate in a manner that meets the criteria for designation as a resource recovery facility.

However, a new or existing facility can "meet" the specified criteria, now and indefinitely thereafter, for a SARRFP. Since the deletion of the word "will" leaves the unmodified word "meet" in the comparable context as it is used in proposed section 66266.7(c)(1) and since the commentor raised no objection to the wording in section 66266.7(c)(1), the deletion of the word "will" from the subject section should adequately address the commentor's concern.

Comment 182 - Section 66266.8(b)(2)(A) and (B)

Commentor A - EPA Region IX

Comment summary: "There is a potential ambiguity between the requirements of subsection (b)(2)(A) [of section 66266.8], for 'a statement that the person and the facility meet the criteria....', and subsection (b)(2)(B) [of section 66266.8], for 'evidence and written assurance that the person and the facility will meet. [sic] the criteria....' (emphasis added) [sic] In contrast to [subsection] (b)(2)(A), the [subsection] (b)(2)(B) wording could be read to imply that the criteria may not be met until some future unspecified time. Recommendation: Add to [subsection] (b)(2)(B): 'Evidence and written assurance that the person and the facility will continue to meet the criteria....'"

Comment response: The comment was accommodated by deleting the word "will" from proposed section 66266.8(b)(2)(B) instead of adding the words "continue to" that the commentor recommended. The commentor's words would not conform grammatically if the subject facility were a new facility. A new facility generally has not operated, so it cannot "continue to" operate in a manner that meets the criteria for designation as a resource recovery facility. However, a new or existing facility can "meet" the specified criteria, now and indefinitely thereafter, for a SBRRFP. Since the deletion of the word "will" leaves the unmodified word "meet" in the comparable context as it is used in proposed section 66266.8(b)(2)(A) and since the commentor raised no objection to the wording in section 66266.8(b)(2)(A), the deletion of the word "will" from the subject section should adequately address the commentor's concern.

Comment 183 - Section 66266.9(b)(2)(A) and (B)

Commentor A - EPA Region IX

Comment summary: "There is a potential ambiguity between the requirements of subsection (b)(2)(A) [of section 66266.9], for 'a statement that the person and the facility meet the criteria....', and subsection (b)(2)(B) [of section 66266.9], for 'evidence and written assurance that the person and the facility will meet. [sic] the criteria....' (emphasis added) [sic] In contrast to

[subsection] (b)(2)(A), the [subsection] (b)(2)(B) wording could be read to imply that the criteria may not be met until some future unspecified time. Recommendation: Add to [subsection] (b)(2)(B): 'Evidence and written assurance that the person and the facility will continue to meet the criteria....'"

Comment response: The comment was accommodated by deleting the word "will" from proposed section 66266.9(b)(2)(B) instead of adding the words "continue to" that the commentor recommended. The commentor's words would not conform grammatically if the subject facility were a new facility. A new facility generally has not operated, so it cannot "continue to" operate in a manner that meets the criteria for designation as a resource recovery facility. However, a new or existing facility can "meet" the specified criteria, now and indefinitely thereafter, for a SCRRFP. Since the deletion of the word "will" leaves the unmodified word "meet" in the comparable context as it is used in proposed section 66266.9(b)(2)(A) and since the commentor raised no objection to the wording in section 66266.9(b)(2)(A), the deletion of the word "will" from the subject section should adequately address the commentor's concern.

Comment A184 - Section 66266.20(a)(1)(B) 1. [sic]

Commentor A - EPA Region IX

Comment summary: "Typographical error [in section 66266.20(a)(1)(B) 1. (sic)]. Recommendation: Delete the second semicolon, after 'or'."

Comment response: The commentor cited, in the heading for the comment, section "66266.20(a)(1)(B) 1." of the proposed regulations, a subsection which does not exist. Presumably the commentor intended to cite section 66266.20(b)(1)(B) 1., which does exist and which does include the typographical error identified by the commentor. [The typographical error exists only in the "Text of Proposed Regulations" version (blue cover), not in the "Working Copy Document" version (yellow cover) of the proposed regulations; both versions (dated 6/1/89) were available to the public.] Aside from these technicalities, the comment was accommodated as recommended.

Comment A185 - Section 66266.30(b)(2)

Commentor A - EPA Region IX

Comment summary: "Possible typographical errors: Should second parentheses [sic] follow 'treatment', rather than 'oil'? It appears that the phrase 'by processing, blending or other treatment' is intended to modify 'fuel produced from hazardous

waste', rather than 'used oil'. Recommendation: Move second parenthesis and delete comma after 'oil', as follows:

'(2) Fuel produced from hazardous waste (other than used oil) by processing, blending, [sic] or other treatment that is exempt....'"

Comment response: The comment was accommodated as recommended, but additional words were added to eliminate the possible creation of an ambiguous antecedent for the relative pronoun "that". The movement of the second parenthesis in accordance with the comment could lead the reader to conclude mistakenly that the antecedent was the word "treatment" instead of the word "waste". The addition of the words "if [that] hazardous waste" simply eliminates the use of the relative pronoun and thus the possible ambiguity.

Comment A186 - Section 66266.32(c)

Commentor A - EPA Region IX

Comment summary: "[Section] 66266.32(c) has modified the [40] CFR [section] 266.32(c) wording to substitute 'Generators who burn....' in place of 'Generators who are burners....', which has resulted in some ambiguity. The preceding subsection [sic], [section] 66266.32(b), has cross-referenced to [sic] the definition of 'burner' in section 66266.35, for clarity. However, [section] 66266.32(c) does not use the term 'burner', nor does it specify the substance (hazardous waste fuel) being burned. Recommendation: Either use [the] term from 40 CFR [section] 266.30(c)[sic]:

'(c) Generators who <u>are burners</u> also are subject to Section 66266.35.';

or add [a] reference to hazardous waste fuel:

'(c) Generators who burn <u>hazardous waste fuel</u> also are subject....'"

Comment response: The comment addresses a possible typographical error, because there was no indication of a deletion of existing federal language in 40 CFR section 266.32(c) from proposed Section 66266.32(c) in any of the versions of that regulation submitted for public comment. Accordingly, the comment was accommodated by adding the missing words from 40 CFR section 266.32(c) to section 66266.32(c), as shown in the first of the commentor's two recommendations. [Since the term "burner" has already been related to its definition in section 66266.35 via section 66266.32(b), the reference to its definition does not have to be repeated in section 66266.32(c).] Incidentally, there is a typographical error in the comment itself, where the commentor cited 40 CFR section "266.30(c)"; the commentor should have cited 40 CFR section "266.32(c)" instead, because 40 CFR section 266.30(c) apparently does not exist.

Comment A187 - Section 66266.35(c)(1)

Commentor A - EPA Region IX

Comment summary: "Apparent typographical error [in section 66266.35(c)(1)]: Cross-reference citation is incorrect. Short-term accumulation requirements are in [40 CFR] Part 262, not [40 CFR Part] 266. Recommendation: Delete Section [sic] 66266.34; insert Section [sic] 66262.34."

Comment response: The comment was accommodated by correcting the typographical error in the section number of the cross-reference in proposed section 66266.35(c)(1) from "66266.34" to "66262.34". [Since the same typographical error also occurred in proposed section 66266.34(c), that error was corrected as well.]

Comment 188 - Section 66266.50(b)(1)(C)

Commentor A - EPA Region IX

Comment summary: "[Section] 66266.50(b)(1)(C) requires that used and recycled oil containing 1000 ppm or less total halogens must meet the notification and recordkeeping requirements of Health and Safety Code Sections [sic] 25250.1(e) and 25250.19. The equivalent CFR section [40 CFR section 266.40(e)] requires that on-specification used oil fuel, including oil containing 4000 ppm or less total halogens, must comply with analysis and recordkeeping requirements in [40 CFR section] 266.43(b)(1) and (6).

H&S [sic] Code [section] 25250.19 requires that records be retained for three years. However, [40 CFR section] 266.43(b)(6) lists additional recordkeeping requirements--regarding operating logs, and other information listed in [40 CFR section 266.43(b)(6)] (i)(A)-(D)--that are not included in either of the cited H&S [sic] Code sections. However, this CFR information is set forth in [section] 66266.51(c)(1)(F) [sic].

Recommendation: Add additional reference to [section] 66266.50(b)(1)(C), and modify language as follows:

(C)...subject to the notification and recordkeeping requirements of Health and Safety Code Sections 25250.1(e) and 25250.19, and subsection [sic] [Section] 66266.51(c) of this Chapter [sic]."

Comment response: The commentor cited section "66266.51(c)(1)(F)", which does not exist in the proposed regulations; section 66266.51(c)(2)(F) is presumably the intended citation. Aside from that minor problem, the comment is being accommodated in part, by an amendment to state statute which became effective on January 1, 1990 [Assembly Bill (AB) 817, Ch. 1254, Stats. 1989]. That amendment modifies the Department's standards for "recycled oil" set forth in Health and Safety Code section 25250.1(c) to include a standard of less than 2 ppm of PCBs and a

standard of total halogens equivalent to, and referenced to, the federal "presumptive mixing rule" set forth in 40 CFR section 266.40(c) [Health and Safety Code sections 25250.1(c)(6) and (7)]. Therefore, "recycled oil" and used oil that meets the "recycled oil" standards cannot contain 2 ppm or more of PCBs or fail the federal "presumptive mixing rule" and still qualify for the minimal regulation provided for such oils elsewhere in state used oil control laws (i.e., in Health and Safety Code, Division 20, Chapter 6.5, Article 13). Used oil that meets the "recycled oil" standards, except for the PCB standard and/or except for the federal "presumptive mixing rule", and that is to be burned for energy recovery as specified, is subject to full regulation as if it were a hazardous waste to be incinerated (see Health and Safety Code section 25250.5), regardless of the device actually used.

Since the state's full hazardous waste control regulations are considerably more stringent than the corresponding federal used oil fuel regulations (even as modified to conform with the TSCA PCB regulations and set forth in proposed section 66266.51) the entire proposed section 66266.51 is being deleted. Therefore, the commentor's suggested cross-reference to that deleted section cannot, of course, be accommodated literally. However, the Department has accommodated the commentor's intent by adding new subsection (d) to proposed section 66266.50 which explicitly adds the federal recordkeeping requirements of 40 CFR section 266.43(b)(6) to the existing notification, testing and recordkeeping requirements of Health and Safety Code sections 25250.1(e) and 25250.19 which are also referenced. Accordingly, those requirements, to the extent that they appear in subsections (b)(1)(B) and (b)(1)(C) of proposed section 66266.50, are being deleted as redundant of new subsection (d).

Since the state's full hazardous waste control regulations are at least equivalent to, or more stringent than, the corresponding federal total halogen standard and federal "presumptive mixing rule", the remainders of subsections (b)(1)(B) and (b)(1)(C) of proposed section 66266.50 and part of subsection (b)(1)(A) (all of which are based on federal requirements) are being deleted as less stringent.

Comment 189 - Section 66266.50(c)

Commentor A - EPA Region IX

Comment summary: "This subsection [section 66266.50(c)] states that a modified manifesting procedure does not apply to certain used oils, but does not clearly state what procedures <u>do</u> apply. However, the Statement of Reasons indicates that the intent of this subsection is to clarify that such oils are subject to full manifesting requirements, in accordance with 40 CFR Part 266, Subpart D. Recommendation: Add language and appropriate citations to clarify the manifesting procedures and requirements that apply to these oils."

Comment response: This comment has been accommodated by modifying the wording in section 66266.50(c) to state essentially that the full manifesting procedure prescribed by Health and Safety Code sections 25160 and 25161, but not the modified manifesting procedure of Health and Safety Code section 25250.8, applies to used oil (including fuel produced from used oil, as specified) that meets the characteristics specified in the applicable subsections of section 66266.50(c).

Comment 190 - Section 66266.51 (c)(1)(F)[sic]

Commentor A - EPA Region IX

Comment summary: "The CFR provision [40 CFR section 266.43(b)(6)(ii)] requires that a marketer keep, for three years, copies of each invoice he receives or initiates, and of each certification notice he receives or sends. [section] 66266.51(c)(1)(F)(4) [sic] tracks this requirement for certification notices received from burners; however, this subsection does not include equivalent requirements for keeping either certification notices sent by the marketer, or invoices received or initiated. Recommendation: Add language to [section] 66266.51 (c)(1)(F)(4)[sic] to include certification notices sent by the marketer; add a new [section 66266.51] (c)(1)(F)(4)[sic] regarding invoices received or initiated."

Comment response: The commentor addressed section 66266.51(c)(1)(F)(4) (or equivalent) three times, a section which does not exist in the proposed regulations. Presumably the commentor intended to cite proposed section 66266.51(c)(2)(F)(4) (or equivalent) each time. Also, the commentor's recommendation to "add a new [section] (c)(1)(F)(4)" cannot be accommodated literally, because of the same error of citation, and because a proposed section 66266.51(c)(2)(F)(4) already exists. Aside from these technicalities, the comment is being accommodated by an amendment to state statute which became effective on January 1, 1990 (AB 817, Ch. 1254, Stats. 1989). That amendment modifies the Department's standards for "recycled oil" set forth in Health and Safety Code section 25250.1(c) to include (among other provisions) a standard of less than 2 ppm of PCBs [Health and Safety Code section 25250.1(c)(7)]. Therefore, used oil cannot contain 2 ppm or more of PCBs and still qualify for the minimal regulation provided for "recycled oil" and used oil that meets the "recycled oil" standards elsewhere in state used oil control laws (i.e., in Health and Safety Code, Division 20, Chapter 6.5, Article 13). Used oil that meets the "recycled oil" standards, except (for example) for the PCB standard, and that is to be burned for energy recovery is subject to full regulation as if it were a hazardous waste to be incinerated (see Health and Safety Code section 25250.5), regardless of the device actually used.

Since the state's full hazardous waste control regulations are considerably more stringent than the corresponding federal used oil

fuel regulations (even as modified to conform with the TSCA PCB regulations and set forth in proposed section 66266.51) the entire proposed section 66266.51 is being deleted. Therefore, the less stringent federal invoice system and certification notices addressed in the subject comment are superseded by the more stringent state manifest, notification, and facility permit requirements (among others) imposed by the new state law (AB 817, Ch. 1254, Stats. 1989).

Comment A191 - Chapter 18

Commentor - EPA Region IX

Comment summary: The following are minor typographical errors in the 66268 regulations or editorial comments which the State should correct prior to finalizing the regulations:

Citations	Change
66268 (entire)	When RCRA Sections are referred to, Section should be spelled with an uppercase "S".
66268.5 Subsection (h)(2)(A)	The phrase "the interim status" should be "in interim status."
66268.7 Subsection (a)	Line 2, "the chapter" should be "this chapter."
66268.7 Subsection (a)(3)	Line 2, add "or a nation-wide variance under Article 3" after Section 66268.5." The nation-wide capacity variances which are referred to here are already reflected in the dates for several prohibitions listed in 66268.30-33 [for example, the November 8, 1990 deadline for dioxin-containing waste soil and debris in 66268.31(a)(1)].
66268.8 Subsection (b)	Line 2, "which deems" should be "which it deems."
66268.10	In the first paragraph, lines 1 and 3, "EPA" should be "U.S. EPA."
66268.10	Under "Section 66261.31 Wastes", the word "Wastes" before "F006" should be removed.
66268.10	Under "Section 66261.32 Wastes", the word "Wastes" before "K001" should be removed.

66268.10	Under "Section 66261.32 Wastes", the definition of K049 waste which begins "Stop oil" should begin "Slop oil."
66268.10	Under "Section 66261.33(e) Wastes", "P069 -- Methyllactonitrile" should be "P069 -- 2-Methyllactonitrile."
66268.11	In the first paragraph, lines 1 and 3, "EPA" should be "U.S. EPA."
66268.11	Under "Section 66261.31 Wastes", "spend" should be "spent" at the end of line 5 of the definition of "F024."
66268.11	Under "Section 66261.33(f) Wastes", "U073 -- Dichlorobenzidene, 3,3-" should be "U073 -- Dichlorobenzidene, 3,3'-".
66268.11	Under "Section 66261.33(f) Wastes", "U095 -- Dimethylbenzidene, 3,3-" should be "U095 -- Dimethylbenzidene, 3,3'-".
66268.12	In the first paragraph, lines 1 and 3, "EPA" should be "U.S. EPA."
66268.12	Under "Section 66261.33(f) Wastes", "U038 -- Ethyl-4-4 chlorobenzilate" should be "U038 -- Ethyl-4-4' chlorobenzilate".
66268.12	Under "Section 66261.33(f) Wastes", "U052 -- -Cresols" should be "U038 -- Cresols".
66268.12	Under "Section 66261.33(f) Wastes", "U085 -- oxirane" should be "U085 -- 2,2' Bioxirane".
66268.12	Under "Section 66261.33(f) Wastes", "U091 -- 3,3 methoxybenzidine" should be "U091 -- 3,3' Dimethoxybenzidine".
66268.30 Subsection (a)	Line 2, "Industry and EPA ..." should be "EPA ..." so as to be consistent with the rest of Chapter 18.
66268.31 Subsection (a)	Line 2, "Industry and EPA ..."

	should be "EPA ..." so as to be consistent with the rest of Chapter 18.
66268.32 Subsection (i)	Line 2, add the phrase "and under RCRA Section 3004(d)" after the phrase "of this section." Although the RCRA 3004(d) wastes are listed in 66268.32(a), RCRA 3004(d) is referred to directly in several other places in 66268. Adding the phrase here will maintain consistency.
66268.33 Subsection (a)	Line 8, "CaSO 4" should be "$CaSO_4$".
66268.33 Subsection (b)	Line 2, "Industry and EPA ..." should be "EPA ..." so as to be consistent with the rest of Chapter 18.
66268.33 Subsection (e)	In the second paragraph, "(2)" should be inserted before "Persons" at the beginning of the paragraph.
66268.33 Subsection (f)	Line 4, "federal RCRA" should be changed to "RCRA" so as to be consistent with the rest of Chapter 18.
66268.41	In Table CCWE (F001-F005 spent Solvents), the heading "Wastewaters containing spent solvent" should be "Wastewaters containing spent solvents".
66268.41	In Table CCWE (F001-F005 spent Solvents), the heading "All others spent solvents wastes" should be "All other spent solvent wastes".
66268.41	In Table CCWE (F001-F005 spent Solvents), the entry "1,1,2-Trichloro-1,2,2-Trifluroethane" should be "1,1,2-Trichloro-1,2,2-Trifluoroethane".
66268.41	In Table CCWE (second table), the heading "F020-F023 and F026-F028 dioxin containing" should read "F020-F023 and F026-F028 dioxin containing wastes".
66268.41	In Table CCWE (K062

	nonwastewaters), a dividing line should be inserted between the headings and the constituents.
66268.42 Subsection (a)(2)	At the end of the paragraph, "... 66268.41 (a)" should be "... 66268.41 (a))".
66268.43	In Table CCW (all tables), lines should be inserted between the headings and the constituents.
66268.43	In Table CCW (third table), the word "Reserved" before "K001 ..." in the table heading should be removed.
66268.43	In Table CCW (K022 nonwastewaters), the "19" on the line after the "Acetophenone ... 19" line should be removed.
66268.43	In Table CCW (K087 nonwastewaters), "???" following the word be removed.
66268.43	In Table CCW (K087 wastewaters), "Napthalene" should be "Naphthalene".
66268.43	In Table CCW (K104 wastewaters), in the heading the words "in mg/l" should be under the word "Concentration", not under "K104 wastewaters".
66268.44 Subsection (g)	Lines 2-3, "... US EPA Administrator a delegated ..." should be "... U.S. EPA Administrator or a delegated ...".
66268.50 Subsection (a)	Line 3, "prohiited" should be "prohibited".
66268.50 Subsection (c)	Line 1, "A owner/operator ..." should be "An owner/operator ...".
66268.50 Subsection (d)	Line 3, add "a nation-wide variance under Article 3" after "Section 66268.5," The nation-wide capacity variances which are referred to here are already reflected in the dates for several prohibitions listed in 66268.30-33 [for example, the November 8, 1990 deadline for dioxin-containing waste soil and debris in 66268.31(a)(1)].

Appendix I, 4.1	Line 3, "EPA" should be "U.S. EPA and the Department".
Appendix I, 4.2.1	Paragraph 1, line 10, "EPA" should be "U.S. EPA".
Appendix I, 4.3.2	Line 11, "Vaccum" should be "Vacuum".
Appendix I, 4.4	Line 3, "EPA" should be "U.S. EPA and the Department".
Appendix I, 4.4	Line 6, "acidwashed" should be "acid-washed".
Appendix I, 5.1.1	Line 1, "generate" should be "generated".
Appendix I, 5.3	"HNO[3]" should be "HNO3".
Appendix I, 6.6	Line 3, "a 4° C" should be "at 4° C".
Appendix I, 7.2.4	Line 2, "tthe" should be "the".
Appendix I, 7.2.4	Last line, "is Step 7.4" should be "in Step 7.4".
Appendix I, 7.3	Line 1, "wastes" should be "waste".
Appendix I, 7.3	Line 5, "<2>" should be removed.
Appendix I, 8.8	Last line of the Note, "one the filter" should be "one filter".
Appendix I, 8.10	Line 2 of the Note, "due" should be removed.
Appendix I, 8.12	Line 6, "acidwashed" should be "acid-washed".
Appendix I, 8.14	In the equation, "(V[2](C[2])" should be "(V[2])(C[2])".
Appendix I, 9.0	Paragraph 3, line 3, "ZHE of obtain" should be "ZHE to obtain".
Appendix I, 9.4.1	Line 2, "sample or waste" should be "sample of waste".
Appendix I, 9.12.1	Line 2, "reservior" should be "reservoir".
Appendix I, 9.12.2	Line 6, "Put-5-10" should be "Put 5-10".

Appendix I, 9.13	Third to last line, "collected in the TEDLAR" should be "collected if the TEDLAR".
Appendix I, 9.15	Under the equation, "V[1]=The volume of the first phases (L)" should be "V[1]=The volume of the first phase (L)".
Appendix I, 9.16	Line 3, "qualify" should be "quality".
Appendix I, 10.3	Line 1, "if is" should be "it is".
Appendix I, 10.3	Last line, "maxtrix" should be "matrix".
Appendix I, Table 1	Fourth table entry, "Carbon tetrachlorid" should be "Carbon tetrachloride".
Appendix I, Table 1	Last table entry, the CAS No. for Xylene "1930-20-7" should be "1330-20-7".
Appendix I, Table 2	Second entry, "Lars Lande Manfacturing" should be "Lars Lande Manufacturing".
Appendix I, Table 4	First entry, "Nuciepore Corp." should be "Nuclepore Corp.".
Appendix I, Figure 3	"Pistion" should be "Piston".
Appendix II	The ninth entry in the Table, "Ethly acetate" should be "ethyl acetate".
Appendix II	Fourteenth entry in the Table, "12,7" should be "12.7".
Appendix II	Fourth to last entry in the Table, "1,1,2-Trichlore-1,2,2-trifluoroethane" should be "1,1,2-Trichloro-1,2,2-trifluoroethane".
Appendix III	EPA Listed Compounds, Volatiles, fourteenth entry, "1,2-Dibromomethane" should be "1,2-Dibromoethane".

Comment response: The comments are accommodated by correcting the above listed typographical errors.

Comment A192 - section 66264.312 (a) (1)

Commentor - EPA Region IX

Comment summary: The commentor points out a typographical error in which the word "or" should be "of".

Comment response: The typographical error will be corrected.

Comment A193 - section 66265.314 (a)

Commentor - EPA Region IX

Comment summary: The commentor believes that by deleting the prefix "non" from non-containerized that the proposed regulation would not prohibit the disposal of non-containerized liquid hazardous wastes.

Comment response: See response to Comment A167.

Comment A194 - section 66265.314

Commentor - EPA Region IX

Comment summary: The state program should include a prohibition against the placement of any liquid which is not a hazardous waste in a landfill. The proposed regulation deletes the federal prohibition against such liquids.

Comment response: The proposed state regulations will be amended to include section 265.314 (f), which prohibits the placement of any nonhazardous liquid waste in a landfill, as section 66265.314 (d).

Comment A195 - section 66264.251 (e)

Commentor - EPA Region IX

Comment summary: The word "and" located at the end of subparagraph (3) should be moved to the end of subparagraph (4).

Comment response: The suggested correction will be made.

Comment A196 - Throughout Article 13 of Chapters 14 and 15

Commentor - EPA Region IX

Comment summary: The commentor points out that the term "vadose zone" is not defined and is not used throughout the regulations as the term "unsaturated zone" is. The commentor recommends that "unsaturated zone" be used to replace "vadose zone".

Comment response: This comment cannot be accomodated. The term "vadose zone" is used in the statutory language found in Article 9.6 of the California Health and Safety Code. To remove any ambiguity, the term "vadose zone" has been defined synonymously with "unsaturated zone" in section 66260.10.

Comment A197 - section 66264.273 (i) and 66264.280 (c) (6)

Commentor - EPA Region IX

Comment summary: The commentor suggests that in order to be consistent with current federal statutory authority, the standard for managing airborne contaminants should include the phrase, "as necessary to protect human health or the environment".

Comment response: The cited sections will be rewritten to read:

> "The owner or operator shall manage the unit to keep the release of airborne contaminants below nuisance levels or other levels necessary to protect human health or the environment."

Comment A198 - section 66264.273 (j) (2) (A) and 66265.272 (f) (2) (A)

Commentor - EPA Region IX

Comment summary: The word "if" should be deleted from the beginning of these paragraphs.

Comment response: The word "if" will be deleted from the beginning of these paragraphs.

Comment A199 - section 66264.273 (j) (2) (A) (B) (C) 66265.272 (f) (2) (A) (B) (C) and 66265.278 (h)

Commentor - EPA Region IX

Comment summary: The commentor believes that the proposed regulation introduces a new standard: no migration of hazardous waste constituents in the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state. (Commentor's underlines) The commentor believes that this new language arguably sanctions releases which are in concentrations less than those which "pollute or threaten to pollute" and could therefore impair agency authority to require corrective action for releases under RCRA sections 3004 (u) and 3008 (h).

Comment response: The underlined language is statutory language which is contained in Article 9.6 of the California Health and Safety Code. This comment will be partially accomodated by modifying the language in these sections to restrict the migration of hazardous constituents in concentrations which pollute or threaten to pollute, only to those hazardous constituents which are derived from non-RCRA wastes. No migration of hazardous constituents derived from RCRA wastes will be allowed. The language for all of the sections in question will be similar to that used in section 66264.273 (j) (2) (A):

> "The land treatment unit was an existing land treatment unit as of January 1, 1988, and no hazardous constituents identified in Appendix VIII to Chapter 11 of this Division have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state, and no other hazardous constituents have migrated from the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state. In making this demonstration..."

Comment A200 - section 66264.273 (l) and 66265.272 (h)

Commentor - EPA Region IX

Comment summary: For purposes of clarity, the terms "removal action", "remedial action", and "hazardous substance release site" should be defined.

Comment response: The following language will be added as sections 66264.273 (m) and 66265.272 (i):

> For purposes of this section, the terms "removal", "remedial action", "hazardous substance", and "release" shall be defined in accordance with Article 2 (commencing with section 25310) of Chapter 6.8 Division 20 of the Health and Safety Code.

Comment A201 - section 66264.278 and 66265.278 (i)

Commentor - EPA Region IX

Comment summary: For consistency, the term "value" should be replaced with the term "concentration".

Comment response: The term "value" will be replaced with "concentration".

Comment A202 - section 66264.278 (i) (1) and 66265.278 (i) (1)

Commentor - EPA Region IX

Comment summary: For clarity the phrase "within 72 hours" should be moved to the beginning of the sentence.

Comment response: The phrase "within 72 hours" will be moved to the beginning of the sentence.

Comment A203 - Chapter 18

Commentor - EPA Region IX

Comment summary: The following are significant typographical errors, citational errors, or word omissions in the 66268 regulations which could cause difficulty or misinterpretation of the regulations:

Citations	Change
66268.5 Subsection (h)(1)	The reference to "Section 66268.50(a)(1)" should be to "Section 66268.50(a)" since both 66268.50(a)(1) and 66268.5(a)(2) are applicable.
66268.7 Subsection (b)(8)	Line 2, the reference to "66266.301(b)" should be to "66266.20(b)."
66268.7 Subsection (c)(3)	Line 8, the reference to "66268.5(g)(2)" should be to 66268.31 Subsection (c) "66268.5(h)(2)."
66268.8 Subsection (a)	Line 4, the reference to "66268.5(g)(2)" should be to "66268.5(h)(2)."
66268.12 Subsection (a)	Line 4, the reference RCRA "Section

	3004(g)(6)(e)" should be to RCRA "Section 3004(g)(6)(C)."
66268.30 Subsection (a)	Line 2, the reference to "Section 66261.31 of Chapter 18" should be to "Section 66261.31 of Chapter 11."
66268.30 Subsection (c)	Last line, the reference to "66268.5(g)(2)" should be to "66268.5(h)(2)."
66268.31 Subsection (a)	Line 2, the reference to "Section 66261.31 of Chapter 18" should be to "Section 66261.31 of Chapter 11."
66268.31 Subsection (c)	Line 4, the reference to "66268.5(g)(2)" should be to "66268.5(h)(2)."
66268.31 Subsection (a)(4)	Line 1, the phrase "including free liquids associated with any solid or sludge" should be added after "Liquid hazardous wastes" to be consistent with the RCRA Section 3004(d) statute.
66268.32 Subsection (a)(5)	Line 1, the phrase "including free liquids associated with any solid or sludge" should be added after "Liquid hazardous wastes" to be consistent with the RCRA Section 3004(d) statute.
66268.33 Subsection (d)	Line 4, the reference to "66268.5(g)(2)" should be to "66268.5(h)(2)."
66268.41 Subsection (a)	Line 3, the phrase "extract of a waste treatment residual" should be "extract of a waste or waste treatment residual."
66268.50 Subsection (a)(1)	Line 1, the phrase "in tanks or containers" should be added after "A generator stores such wastes" in order to make the section consistent with Section 268.50 of the federal regulations.
Appendix I Paragraph 7.4.3,	"3.7 mL 1.0 N HCl" should be "3.5 mL 1.0 N HCl."
Appendix I Paragraph 9.15,	At the beginning of the equation, "(V[1])(V[1])" should be "(V[1])(C[1])."

66260.10	The definition of "Halogenated organic compounds" refers to "Appendix III to this chapter." Since this definition is no longer in Chapter 18, the reference should be "Appendix III to Chapter 18 of this Division."

Comment response: The comments are accommodated by correcting the above listed typographical errors.

Comment A204 Section 66268.5 Subsection (e)

Commentor - EPA Region IX

Comment summary: The commentor states that wording of Section 66268.5(e) is slightly ambiguous in that under the present language the Department could grant a longer extension than that granted by the U.S. EPA. The commentor recommends to add the following language to the and of 66268.5(e):

> "For RCRA hazardous waste subject to land disposal restrictions under this chapter, in no event may the Department grant an extension under this Section which exceeds the length of the extension granted by the U.S. EPA Administrator as provided in Section 66268.5(b)."

Comment response: The Department agrees with the commentor that the suggested change can be added for clarity. Hence the comment is accommodated.

Comment A205 - Sections 66268.5, 66268.7, 66268.8, and 66268.42

Commentor - EPA Region IX

Comment summary: The commentor recommends the following changes to maintain clarity and consistency in the proposed regulations, although the changes are not needed to ensure equivalent stringency between 40 CFR Part 268 and the proposed Chapter 18 regulations.

RECOMMENDATIONS:

Citation	Change
66268.5(f)	line 2, add "and for RCRA hazardous waste the U.S. EPA Administrator" after "Department"
66268.7(a)(6)	last line, add "or U.S. EPA Administrator" after "Department"

66268.8(a)(2)	line 1, change "USEPA and" to "Regional Administrator of U.S. EPA and to"
66268.8(b)	line 2, add "or the U.S. EPA Regional Administrator" after "Department" to be consistent with previous paragraphs in Section 66268.8
66268.8(b)(2)	last line, add "or the U.S. EPA Regional Administrator" after "Department" to be consistent with previous paragraphs in Section 66268.8
66268.42(a)	last line, add "and U.S. EPA Administrator" after "Department" since U.S. EPA must approve all equivalent methods prior to the "Department"

Comment response: The Department agrees with the commentor that the suggested changes can be added for clarity. Hence the comment is accommodated.

Comment A206 - Section 66268.5 Subsection (h)

Commentor - EPA Region IX

Comment summary: The commentor states that the phrase "or for RCRA hazardous wastes, the USEPA Administrator" should be removed since it is unnecessary here and could be deceptive or confusing. The commentor provided the following example: Suppose (for a RCRA hazardous waste) U.S. EPA grants an extension, but the Department does not. The requirement of (h) would be satisfied (U.S. EPA granted an extension), thereby allowing the relaxing of the storage prohibitions in 66268.50 without the approval of The Department. The commentor recommends that the proposed Section 66268.5(h) should be rewritten to read as follows:

> "Whenever the Department establishes an extension to an effective date under this section, during the period for which such extension is in effect:"

Comment response: The Department agrees with the commentor that the suggested change can be added for clarity. Hence the comment is accommodated.

Comment A206.5 - Section 66268.7

Commentor - EPA Region IX

Comment summary: Notifications and certifications required by this section generally are required to include the EPA Hazardous waste Number. The commentor states that Section 66268.7 does not indicate whether any State-designated waste code needs to be included for non-RCRA hazardous waste. This omission may be interpreted to the effect that, for non-RCRA hazardous waste that has no EPA waste code designation, the notification need not include any waste code designation or waste description.

Comment response: The discrepancy has been corrected. The notification and certification will also include non-RCRA waste codes.

Comment A207 - Section 66268.8 Subsections (a)(3) and (a)(4)

Commentor - EPA Region IX

Comment summary: The commentor states that under the proposed language under subsections (a)(3) and (a)(4) of Section 66268.8, both the EPA and the Department would have to make the request to extend the length of record retention, thus making them less stringent than the existing federal regulations, which require only EPA to request the extension. The commentor recommends that the last sentence of subsections (a)(3) and 66268.8(a)(4) be rewritten as follows:

> "The five year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the U.S. EPA Administrator or the Department."

Comment response: The Department agrees with the commentor and has accommodated the recommendation.

Comment A208 Section - 66268.8 Subsection (c)

Commentor - EPA Region IX

Comment summary: The commentor states that the proposed language under Section 66268.8 (c) does not conform with 40 CFR Section 268.8 (c) which it was based and would cause significant confusion. The commentor recommends to rewrite Section 66268.8 (c) as follows:

> "The owner or operator of a treatment, recovery or storage facility receiving wastes subject to a valid certification shall keep copies of the generator's demonstration (if

applicable) and certification in the facility's operating record."

Comment response: The comment is apparently the result of a typographical error and has been corrected.

Comment A209 - Sections 66268.10 and 66268.11

Commentor - EPA Region IX

Comment summary: The commentor states that as written the first paragraph of the proposed Sections 66268.10 and 66268.11 is ambiguous and potentially misleading and also difficult to read. They concluded that the proposed regulation could be interpreted to mean that the "soft-hammer" provisions of RCRA 3004(g)(6)(A) are effective after May 8, 1990 (the date when the "hard-hammer" provisions of RCRA 3004(g)(6)(C) are effective). The commentor recommends that the following:

(a) Rewrite the first paragraph of 66268.10 as follows:

"U.S. EPA will take action under Section 3004(g)(5) and 3004(m) of the Resource Conservation and Recovery Act, by August 8, 1988, for the wastes listed in this subsection (for ease of understanding the wastes have been listed by the subsection of Section 66261 under which they were listed). If U.S. EPA fails to take action for any of these wastes by August 8, 1988, the provisions of Section 3004(g)(6)(A) of the Resource Conservation and Recovery Act will apply to those wastes for which U.S. EPA has failed to take Action. If U.S. EPA fails to take action for any of these wastes by May 8, 1990, the provisions of Section 3004(g)(6)(C) of the Resource Conservation and Recovery Act will apply to those wastes for which U.S. EPA has failed to take action."

(b) Rewrite the first paragraph of 66268.11 as follows:

"U.S. EPA will take action under Section 3004(g)(5) and 3004(m) of the Resource Conservation and Recovery Act, by June 8, 1989, for the wastes listed in this subsection (for ease of understanding the wastes have been listed by the subsection of Section 66261 under which they were listed). If U.S. EPA fails to take action for any of these wastes by June 8, 1989, the provisions of Section 3004(g)(6)(B) of the Resource Conservation and Recovery Act will apply to those wastes for which U.S. EPA has failed to take action. If U.S. EPA fails to take action for any of these wastes by May 8, 1990, the provisions of Section 3004(g)(6)(C) of the Resource Conservation and Recovery Act will apply to those wastes for which U.S. EPA has failed to take action."

Comment response: The Department agrees with the comment and accommodated the recommendation.

Comment A210 - Section 66268.12

Commentor - EPA Region IX

Comment summary: The commentor states that the first paragraph of the proposed Section 66268.12 cited a Section 3004(g)(6)(e) of RCRA does not exist. In addition, they indicated that as presently worded, the paragraph is difficult to read. The commentor recommended that the first paragraph of 66268.12 be rewritten as follows:

> "U.S. EPA will take action under Section 3004(g)(5) and 3004(m) of the Resource Conservation and Recovery Act, by May 8, 1990, for the wastes listed in this subsection (for ease of understanding the wastes have been listed by the subsection of Section 66261 under which they were listed). If U.S. EPA fails to take action for any of these wastes by May 8, 1990, the provisions of Section 3004(g)(6)(C) of the Resource Conservation and Recovery Act will apply to those wastes for which U.S. EPA has failed to take action."

Comment response: The Department agrees with the comment and accommodated the recommendation.

Comment A211 - Section 66268.29

Commentor - EPA Region IX

Comment summary: The commentor states that the proposed section has no parallel in the federal regulations. They added that it does not appear to serve any useful purpose and could be misleading. The commentor recommends to eliminate the proposed section if it serves no useful purpose, but also recommends that the section could be retained for the purpose of listing all hazardous wastes (RCRA and non-RCRA hazardous wastes) subject to land disposal restrictions into Article 2 if the suggested changes are made.

Comment response: The Department accommodated the comment by deleting the whole section. Section 66268.29 is now renamed "List of Restricted Non-RCRA hazardous wastes" to list only non-RCRA hazardous wastes that are subject (or will be subject) to land disposal restrictions. A "[Reserved]" is added for later additions of non-RCRA waste when treatment standard regulations for those wastes are adopted.

Comment A212 - Section 66268.32 (g)(1)

Commentor - EPA Region IX

Comment summary: The commentor contends that the proposed Section 66268.32(g), as presently written, refers to exemptions under Section 66268.6 (a section which does not exist in the California regulations) and does not refer to extensions under 66268.5. The commentor recommends to delete 66268.32(g)(1) as presently written and insert a new 66268.32(g)(1) to read as follows:

> "(1) Persons have been granted an extension to the effective date of a prohibition pursuant to Section 66268.5 with respect to those wastes covered by the extension; or"

Comment response: The comment results from typing error and has been corrected.

Comment A213 - Section 66268.50

Commentor - EPA Region IX

Comment summary: The commentor states that from the language of the regulation, it appears that the Department did not intend to pick up this prohibition for non-RCRA hazardous wastes as well. However, the Statement of Reasons for 66268.50(a) says that a reference to Article 7.7 of Chapter 6.5 of the Health and Safety Code was to be added to this subsection. The commentor recommends that the Statement of Reasons be rewritten to reflect the fact that non-RCRA hazardous wastes are not subject to the storage prohibitions outlined in 66268.50.

In addition, the commentor recommends that the paragraph of proposed Section 66268.5(h) which make reference to Section 66268.50 be revised. If non-RCRA hazardous wastes are not subject to this storage prohibition, Section 66268.5(h) should simply say "for RCRA hazardous wastes, whenever the Department and U.S. EPA Administrator establish an extension to an effective date under this section ..."

Comment response: The Department agrees with the comment and the Statement of Reasons has been corrected. In addition, the proposed language of Section 66268.5 (h) is also revised.

Comment A214 - Appendix III to Chapter 18

Commentor - EPA Region IX

Comment summary: The commentor recommends that if the "California List" of halogenated compounds in Appendix III is intended to apply only to non-RCRA wastes (i.e., if RCRA wastes are subject to the

"EPA List" and non-RCRA wastes are subject to both the "EPA List" and the "California List"), this needs to be spelled out in the definition of "HOCs" in 66260.10 and in the initial paragraph of Appendix III. If the "California List" in Appendix III is intended to apply to both RCRA and non-RCRA hazardous waste, the compounds which are common to both lists (e.g. "tetrachloroethylene", a.k.a. "perchloroethylene" or "tetrachloroethene") should be removed from the "California List" to avoid giving the impression that only the "EPA List" applies to RCRA hazardous wastes and only the "California List" applies to non-RCRA hazardous waste.

Comment response: The Department agreed with the comment. To avoid the potential problem concerning the proper application of Appendix III, the "California List" HOCs are eliminated from the appendix. The "California List" HOCs are now in the newly created Appendix IV.

Comment A215 - General Comment

Commentor - EPA Region IX

Comment summary: The commentor states the following four issues: (1) The explanation in the Statement of Reasons for the deletion of 40 CFR Section 268.4 should be corrected; (2) The Attorney General's statement should include a discussion of whether or not the 268.4 and 268.6 exemptions are recognized in California; (3) For clarity, the conditions under which restricted wastes may be treated in surface impoundments or land treatment facilities should be put into the regulations, or the regulations should cross reference the statute so that a person reading the regulations will be aware that these exemptions exist; and (4) The phrase "unless the land treatment has been authorized by the Administrator of the Environmental Protection Agency" in Section 25179.12 (c) of the State statute should specify which federal regulatory requirements must be complied with.

Comment response: For item (1), the Department agrees with the commentor as to the fact that the Statement of Reasons should be corrected. The Statement of Reasons has been corrected. For item (2), The request is also accommodated. The Attorney General's statement will include the requested discussion. Further, the Statement of Reasons has been amended and discussed this point. For item (3), the commentor's recommendation has already been accomplished. Current State regulations, Title 22, CCR, Section 67700 contains the conditions that the commentor refers to. The conditions under the existing section are being adopted in the proposed Section 66268.1. For item 4, the comment cannot be accommodated. Statutory amendments are beyond the scope of this rulemaking.

Comment A216 - Section 66268.32

Commentor - EPA Region IX

Comment summary: In paragraph 66268.32(d)(2) and (f), language allowing the disposal of specific hazardous wastes in surface impoundments during specified timeframes has been deleted. However, in 66268.32(d)(1) the reference to disposal of specific wastes in surface impoundments has been retained. This seems to be inconsistent.

RECOMMENDATION: Check these sections and also sections in 66268.30 and 66268.31 to make sure that any reference to allowing disposal of restricted wastes in surface impoundments is appropriate.

Comment response: The comment resulted from typing error. The discrepancy has been found and corrected.

Comment A217 - Section 66270.1 (d)

Commentor A - Environmental Protection Agency

Comment summary: Subsection (d) of the referenced section makes the issuance of a waste discharge requirement by a regional water quality control board a prerequisite to the issuance of a hazardous waste facility permit by DHS. In effect, this precondition vests authority in the Board to independently determine whether a permit will be issued at all from DHS. Such independent authority could impair the ability of DHS to effectively carry out its lead agency responsibility for the administration of permit portion of the State hazardous waste program. DHS must be able to issue a RCRA permit in the absence of a WDR.

Comment response: Department feels that Section 66270.1 (D) has been wrongfully included in the proposed regulations. Pursuant to Health and Safety Code Section 25204.5 the Department has adequate authority to require a WDR in order to make a permit decision. This authority has been adequately addressed in the proposed Section 66270.1 (e). Therefore, subsection 66270.1 (d) is deleted.

Comment: A218 - Section 66260.10

Commentor A - EPA Region IX

Synopsis of Comment: See 66260.10 - definition of "treatment" as it is set forth in 66260.10 may mistakenly encompass any method, technique, or process which merely changes or is designed to change the character of hazardous waste. As such, the methods, etc., and changes need not be designed to neutralize or otherwise reduce the hazardous nature of materials in order to fall within the definition.

Recommendation: Redraft the definition of "treatment" to read as follows:

> "Treatment" means any method, technique, or process which changes or is designed to change the physical, chemical, or biological character or composition of any hazardous waste or any material contained therin in such a manner that it removes or reduces the harmful properties of the hazardous waste.

Response to comment: The proposed regulatory definition of "treatment" is indeed broader in scope than the corresponding federal definition. To become authorized under federal law, the State regulations are not required to be equivalent to the federal regulations. They are required to be consistent with the federal regulations, equal to or greater than the federal regulations in their stringency, and they may be broader in scope than the federal regulations. The existing State definition is broader in scope than the federal definition by purposely including all processes which change the chemical, physical, or biological character of a waste; the federal definition requires intent to change the chemical, physical, or biological character of a waste. This definition is also found in State statute and is being repeated here for the purpose of clarifying its application to these regulations; this statutory definition was adopted by the State legislature and cannot be contradicted in these regulations. Thus, the recommended language is not being adopted.

Comment: A219 - 66260.10

Commentor A - EPA Region IX

Synopsis of Comment: The definition of "underground source of drinking water," or "USDW", as set forth in 66260.10 is not equivalent to the corresponding definition in 40 CFR 270.2.

Recommendation:

1. Reinsert "(a)" before "(1) Which supplies any public water system; or".

2. In the last line of the definition, insert the word "not" in order that the line read, "(b) which is not an exempt aquifer".

Response to comment: The Department is accommodating this comment. The subsection designation (a) is being added before the subsection designation (1). The word "not" is being added to subsection (b) to be consistent with the federal definition.

Comment A220 - Section 66270.4

Commentor A - Environmental Protection Agency

Comment summary: The proposed language for Section 66270.4 raises questions about the enforceability of a permit where additional regulations have been promulgated by the Department. EPA has recommended a new language for Subsections (a) and (b) of Section 66270.4.

Comment response: This comment was accommodated. EPA recommended language has been modified as following and replaced for originally proposed language of Subsections (a) and (b) of Section 66270.4. The **underlined** language of Subsection (a) below shows the additional language inserted in the EPA proposed language.

(a) The Department's issuance of a permit does not prevent the Department from adopting or amending regulations which impose additional or more stringent requirements than those in existence at the time a permit is issued and does not prevent the enforcement of these requirements against the owner or operator oa a permitted facility. <u>As part of any formal rulemaking, the Department shall specify the manner in which a proposed regulatory change is intended to apply to facilities which have been issued a hazardous waste facility permit.</u>

(b) Not withstanding subsection (a) above, the owner or operator of a facility which has been issued a hazardous waste facility permit shall comply with conditions of the permit as well as regulations adopted by the Department.

Comment A221 - Section 66270.61 (a) (1)

Commentor A - Environmental Protection Agency

Comment summary: The Department can only issue emergency permits to interim status and permitted facilities. Emergencies can occur at any facility handling hazardous waste (generators, transporters, and TSDs) and therefore, only allowing emergency permits at interim status and permitted facilities is not necessarily more stringent. It is also not necessarily less stringent.

Recommendation: The Department should retain (or obtain) authority to issue emergency permits at non-permitted facilities.

Response: This comment was accommodated. The Department feels that we must react to emergencies in the same way the Environmental Protection Agency (EPA) react to it. Therefore, the proposed language of the referenced section has been modified to state "To an otherwise non-permitted facility, including but not limited to a facility operating pursuant to an interim status or a variance, etc., to allow transfer, treatment, storage, or disposal of hazardous waste."

Comment: A222 - Section 66260.10

Commentor A - EPA Region IX

Synopsis of Comment: State regulations missing the definition of "facility or activity". Although the statement of reasons provided a reasonable explanation for the deletion of this definition, the phrase "facility or activity" is used throughout the regulations and should be included in the definitions.

Recommendations: Include the definition in the state regulations for clarity.

Response to comment: The Department is accommodating this comment. A definition of "Facility or activity" equivalent to that in 40 CFR Section 270.2 is being added to proposed Section 66260.10 CCR. As recommended by the commentor, the 40 CFR definition is being added verbatim except that the reference to the RCRA program is being replaced by a reference to "...this division", ie: the State's hazardous waste control regulations.

Comment A223 - Section 66270.14 (c)

Commentor A - Environmental Protection Agency

Comment summary: The "additional information", which is requested under this subsection, must be provided by owners and operators for entire facilities under the federal scheme, and for regulated units under the State plan. There may be circumstances under which the State regulations are not as stringent as those of the United States. EPA recommends to require owners and operators to submit information about the entire hazardous waste facility, rather than only for the "regulated unit" within that facility.

Response: Subsection (c) of proposed Section 66270.14 requires additional information only as it pertains to the water quality protection requirements of Article 6 of Chapter 14 of this division. Subsection (c) has been further modified as following to clarify its requirements:

"The information specified in this section shall be submitted <u>for each regulated unit</u> at a hazardous waste management facility except as provided in Sections 66264.90 (c) and 66264.700 (d). An owner or operator of a regulated unit that did not receive hazardous waste after February 2, 1985 must submit this additional information only as it pertains to the water quality protection requirements of Article 6 of Chapter 14 of this division."

In response to Environmental Protection Agency's comment, the proposed regulation (Subsection (c) (2) of this section) does require ground water related information for the facility as a whole than for the "regulated units" only. Specific information required for the "regulated units" of a facility is in addition to

the information required for the facility as a whole, and therefore makes these regulations more stringent than the federal regulations.

Comment A224 - Section 66270.40 (a)

Commentor A - Envoronmental Protection Agency

Comment summary: Use of the word "shall" in the context of this subsection mistakenly implies that once a permit has been modified or revoked and reissued, transfer of the permit is always mandatory. Delete the word "shall" and reinsert the word "may".

Comment response: This comment was accommodated. The word "shall" in the above referenced section has been changed to "may".

Comment A225 - Section 66271.18 (g)

Commentor A - Environmental Protection Agency

Comment summary: Federal Section 124.19 (f) sets out what constitutes a final agency action in reviewing the issuance or denial of a permit. Such final agency action is a prerequisite for judicial review. State Section 66271.18 (g), the State corollary to 124.19 (f), is changed in a way which makes it applicable only to parties other than the applicant or holder or the permit. i.e., it sets forth what constitutes "final agency action" for parties other than the applicant or permit holder who wish judicial review . It is unclear from this section what constitutes final agency action for applicants and permit holders.

Recommendation: More clearly explain or refer to regulations which explain what constitutes final agency action for applicants and permit holders.

Comment response: This comment was accommodated. The Department has added the phrase "for applicants and permit holders" to subsection (f) to make clear that this subsection defines final agency action for applicants and permit holders and that subsection (g) defines final agency action for other parties.

Comment: A226 - 66261.3(a)(2)(E)

Commentor A - EPA Region IX

Synopsis of comment: Line 2.39 of this section (version 9) refers to: "paragraph (a)(2)(i) or (a)(2)(ii)." The State has changed the designation of the referenced paragraphs, so this reference should also be changed.

Recommendation: Change to "(a)(2)(A) or (a)(2)(B)."

Response to comment: The Department is accommodating the commentor. The change is being made as suggested.

Comment: B1 - Chapter 11

Commentor B - Tremco

Comment: "The regulation of empty containers under the federal regulations should be adopted in California as described under 40 CFR 261.7 which exempt empty containers which have previously held hazardous waste. The disposal of empty containers is a nightmare for California industry and the disposal of these containers must be addressed in a responsible manner by the State of California. There is currently total confusion on the part of California industry and citizenry with respect to the proper management, recycling and disposal of empty containers. It is requested that the State of California adopt the wording under 40 CFR 261.7."

Response to comment: The Department is partially accommodating this comment. The Department acknowledges that existing State law regarding classification of containers which previously held hazardous material or hazardous waste is complicated. In response to the comments concerning empty container regulations, the Department is including a restatement (with additions and clarifications) of current State law regarding empty containers in this package. The Department is not adopting 40 CFR 261.7 but is rather adopting a version which maintains the current State stringency in a more workable format. For a provision-by-provision justification of the proposed contaminated container regulations and their deviation from the corresponding federal law see the portion of the Statement of Reasons which addresses proposed Section 66261.7.

Comment B2, T5 - Section 66262.34 (e)

Commentor B - Tremco
T - Joint comments - see commentor index

Comment: "The satellite accumulation rules under 40 CFR 262.34 (c) should be adopted to allow generators to accumulate hazardous waste in satellite accumulation areas without being required to date drums under the 90-day or 180-day accumulation period."

Response to comment: The Department is adopting satellite accumulation rules which are similar to those set forth in 40 Code of Federal Regulation section 262.34 (c) in proposed section 66262.34 (c). Proposed section 66262.34 (e) (1) (C) requires that the initial date of waste accumulation be clearly marked on each container. This requirement has been incorporated directly from the existing State statute (Health and Safety Code section 25123.3 (d) (4)). This requirement is necessary to determine if the waste accumulated at a "satellite" accumulation point complies with the accumulation time requirements in order to be exempt from the permitting or interim status requirements. The Department cannot accommodate this comment because to do so would be inconsistent with Health and Safety Code section 25123.3 (d) (4).

Comment: B3 - Chapter 11

Commentor B - Tremco

Comment: "The regulatory structure as it applies to generators of less than 100 kilograms per month, generators of 100 through 1,000 kilograms per month and greater than 1000 kilograms per month as specified in the March 24, 1986 Federal Register (51 FR 10146 et. seq.) should be adopted to bring the California regulations of small quantity generators into conformance with the federal hazardous waste management approach."

Response to comment: The Department cannot accommodate this comment. Health and Safety Code section 25159.5 directs the Department to conform its regulations with those of the EPA but gives the Department discretion to be more stringent and broader in scope than the federal regulations. Existing State law does not recognize any special exemptions parallel to the special, reduced, regulations for conditionally exempt small quantity generators found in 40 CFR Section 261.5. The purpose of this rulemaking is to conform the language and format of the State's hazardous waste control regulations to the federal in order to adopt a single set of regulations incorporating the more stringent requirement of existing State law or federal law for each area of regulation. This rulemaking was intended to neither create new duties nor to create new exemptions. Those actions are not possible unless sufficient documentation, as required by the Administrative Procedures Act, are available to support a new duty or exemption. Thus, creation of special exemptions for any class of hazardous waste generator is outside the scope of this rulemaking.

Comment B4 - 66264.1

Commentor B - Tremco

Comment: "The treatment by hazardous waste generators in accumulation tanks and containers as described in the March 24, 1986 Federal Register at 51 FR 10168 should be specifically adopted by the State of California to allow generators to treat their hazardous waste in accumulation tanks or containers in conformance with the requirements of 262.34 and Subparts J or I of Part 265 without permit requirements under 40 CFR Part 264 and 265 should be specifically adopted by the State of California."

Response to comment: See response to comment T29

Comment B-5 Section 66261

Commentor - Tremco

Comment summary: The commentor requested that the State adopt the identification and listing approach under the federal regulations in 40 CFR Part 261. Adoption by California of the federal regulations by reference would simplify compliance for all industry, especially for those corporations which operate on a multi-state basis.

Comment response: To conform with the current level of stringency in State law, the Department cannot merely adopt the federal regulations by reference. There are several elements in State law which are broader in scope and more stringent than the federal regulations. The Department has attempted to simplify the hazardous waste regulations by melding the most stringent elements of both State and federal regulation to ensure compliance with all applicable requirements. The Department anticipates that the proposed regulations will reduce confusion among the regulated community because there will be only one set of hazardous waste standards in effect in the State.
Within the proposed regulations, the Department has identified those wastes which would be classified as RCRA hazardous wastes pursuant to title 22, Cal. Code Regs., section 66261.100 and those wastes which would be classified as non-RCRA hazardous wastes pursuant to title 22, Cal. Code Regs., section 66261.101. The modification is rejected.

Comment C1 - Sections 66264.191 & 66265.191

Commentor C - California Conference of Directors of Environmental Health

Comment summary: The commentor requests the following information in order to clearly differentiate which types of tanks, aboveground tanks or underground tanks, will be regulated under the proposed regulations:

A. The terms "non-enterable underground tank", "RCRA tank" and "non-RCRA tank" be defined.

B. The draft definitions "aboveground tank", "inground Tank", "onground tank" and "underground tank" be clarified as to which are regulated and how.

Response: The Department feels that the terms as mentioned in part A of the comment and as used in sections 66264.191 and 66265.191 are self explanatory and, therefore, do not need to be defined. For example, a "non-enterable underground tank" is an "underground tank" which can not be physically entered into. The term "underground" tank, however, has been defined in proposed Section 66260.10. Similarly, a "RCRA tank" and a "non-RCRA tank" are the

"tanks" which contains Resource Conservation and Recovery Act (RCRA) and non-RCRA wastes respectively. The terms "tank", "RCRA hazardous waste", and "non-RCRA hazardous waste" have also been defined in Section 66260.10.

The terms mentioned in part B of the comment have been defined in Section 66260.10 of the proposed regulations. These definitions have been taken as such from 40 Code of Federal Regulations Section 260.10. These types of tanks will be regulated pursuant to standards established in Chapters 14 and 15 of the proposed regulations if the waste contained in these tanks is "hazardous waste" as defined in proposed Section 66261.3.

Comment C2 - Chapters 14 & 15, Article 10

Commentor C - California Conference of Directors of Environmental Health

Comment summary: The commentor has expressed some confusion between current State regulations and proposed regulations for underground tanks located at a generator's facility and used to store hazardous waste.

Comment response: Underground storage tanks are regulated pursuant to Health and Safety Code section 25280 et seq. and regulations adopted by the State Water Quality Control Board to implement those regulations. Underground storage tanks used to hold hazardous waste are subject to both those requirements and the RCRA requirements for underground storage tanks.

Comment: C3 - Section 66261.2(a)

Commentor C - California Conference of Directors of Environmental Health

Comment: "Section 66261.2(a) defines a waste as a material if excluded by definition by sections 25143.2(b) or (d), H&SC. An example of the type of waste, which would be considered a material under the draft regulations, is paint waste from an autobody shop which is returned without treatment to the original manufacturing process to be used as a feedstock to make paint primer. Under the draft regulations, these types of waste will not be considered hazardous waste and, therefore, will be exempt from state and local hazardous waste regulatory programs.

These types of waste are hazardous waste and should be managed as such onsite. The generator should comply with the requirements stated in the current statutes for generators managing hazardous waste onsite, e.g. storage times, type of containers and labeling requirements. In addition, these generators should be regulated by State and local inspection programs. If the waste is picked up by

the original manufacturer, we would suggest the State waive transportation and TSDF permit requirements. However, the generator should still comply with all statutes for managing hazardous waste onsite."

Response to comment: The Department cannot accommodate this comment. The legislature has declared in Health and Safety Code Section 25143.2 that these materials are not "waste" and cannot therefore be classified as hazardous waste. While there is merit in the commentor's suggestions that, at a minimum, the generator requirements be applied to these materials (e.g. the spent autobody paint referred to by the commentor), Department regulations cannot contradict State statute. As for the application of State and local inspection programs, the State cannot perform hazardous waste inspections on persons declared by State statute not to be managing hazardous waste. In addition, State regulations cannot establish local ordinances giving local authorities inspection authority.

Comment: C4 - Section 66260.10

Commentor: C - California Conference of Directors of Environmental Health

Comment: "The definition of "accumulated speculatively" is confusing. The definition needs to be clarified to help one understand the meaning of this terminology."

Response to comment: The Department cannot accommodate this comment. The Department does not understand which portion of this definition the commentor finds confusing. This definition is taken almost verbatim from federal law and the interpretive guidances of federal law, such as the preamble to the Federal Register notice adopting this definition, apply to these definitions and can provide further guidance.

Comment: C5 - Section 66260.10

Commentor: C - California Conference of Directors of Environmental Health

Comment: "The definition of "disposal" should include the term "abandon" to be consistent with other chapters in this division. In particular, Section 66261.2(c)(1) defines a material as a waste if it is abandoned by being disposed of. An example of the inconsistency is abandoned drums of hazardous materials are considered waste, however, the abandoned drums are not considered illegal disposal of hazardous waste because disposal doesn't included abandoned of any waste into or on any land or water."

Response to comment: The Department is accommodating this comment. The definition of "disposal" is being split into a subsection (a)

containing the proposed definition and a subsection (b) is being added stating that disposal means "(b) The abandonment of any waste" The Department has also proposed this change to the legislature and it can currently be found in AB 1847.

Comment: C6 - 66260.10

Commentor C - California Council of Directors of Environmental Health

Synopsis of Comment: The references to Section 66261.106 and Section 66261.107 in the definition of "special waste" in Section 66260.10 are incorrect and should be corrected to Section 66261.122 and Section 66261.124 respectively.

Response to comment: The Department is accommodating this comment. The references to Section 66261.106 and Section 66261.107 in the definition of "special waste" in Section 66260.10 are being corrected to Section 66261.122 and Section 66261.124 respectively.

Comment: C7 - 66260.10

Commentor C - California Council of Directors of Environmental Health

Synopsis of comment: The reference to Section 66205.190(c) in the definition of "underground tank" in Section 66260.10 is incorrect and should be 66265.190(c).

Response to comment: The Department is accommodating this comment. The reference to Section 66205.190(c) in the definition of "underground tank" in Section 66260.10 is being changed to 66265.190(c).

Comment: C8 - 66260.200(d)

Commentor C - California Council of Directors of Environmental Health

Synopsis of comment: The reference to "66260.200(e) or (d)" in Section 66260.200(d) should be to "66260.200(e) or (h)".

Response to comment: The Department is accommodating this comment. The reference to "66260.200(e) or (d)" in Section 66260.200(d) is being changed to "66260.200(e) or (h)".

Comment: C9 - 66261.2

Commentor C - California Council of Directors of Environmental Health

Synopsis of comment: In Section 66261.2, the references to subsection (b) in subsection (b)(1), to subsection (c) in subsection (b)(2), and to subsection (d) in subsection (b)(3) should be to subsection (c), (d), and (e) respectively.

Response to comment: The Department is accommodating this comment. In Section 66261.2, the references to subsection (b) in subsection (b)(1), to subsection (c) in subsection (b)(2), and to subsection (d) in subsection (b)(3) are being changed to subsection (c), (d), and (e) respectively.

Comment C10 - Section 66261.33

Commentor C - California Council of Directors of Environmental Health

Comment: "Pages are printed out of sequence, particularly pages 1-14."

Response to comment: The Department apologizes for the mixed up pages which emerged from the printer. However, all pages proposed are included and numbered; thus, the commentor can identify all the regulations proposed and comment accordingly. The pages will, of course, be in order when submitted to the Office of Administrative Law.

Comment C-11 Section 66261.101 (b)(4)

Commentor - California Council of Directors of Environmental Health

Comment summary: "Regulating empty containers as non-RCRA waste may pose a great burden on regulators as well as industries. This section does not exempt any container size (i.e., one ounce containers); any type of material which the container may have held (i.e., motor oil) or any containers which have been triple rinsed with the appropriate solvent to render them non-hazardous. Containers which have been properly emptied and are exempt from regulation pursuant to 40 CFR Section 261.7 pose a minimal environmental impact or a public health hazard. Therefore, these empty containers should not be regulated as hazardous waste. However, drum reclaiming/recycling facilities should be regulated by either local or state jurisdiction, due to the number of containers and the volumes of contaminated rinsate these facilities generate. We strongly suggest that containers considered properly emptied pursuant to 40 CFR Section 261.7, be exempt from the draft regulations."

Comment response: The Department has accommodated this comment by incorporating contaminated container regulations as set forth in title 22, Cal. Code Regs., section 66261.7. If a container meets the conditions set forth in 40 CFR section 261.7, but does not meet the conditions set forth in title 22, Cal. Code Regs., section 66261.7, the container would be considered non-RCRA hazardous waste. However, if a container meets the conditions set forth in title 22, Cal. Code Regs., section 66261.7, the container would be considered nonhazardous waste.

Comment C12 - SECTION 66266.23(b)

Commentor C - California Council of Directors of Environmental Health

Comment summary: "Section 66266.23(b) is not consistent with Section [sic] 66266.23(c) or with Health and Safety Code, [Division 20,] Chapter 6.5, [Article 13,] Section [sic] 25250.1. Section 66266.23(b) as worded, would allow the use of used oil, if identified as a waste solely on the basis of ignitability, for dust suppression or road treatment. Section 66266.23(c), however, prohibits this type usage [sic] of this form of used oil."

Comment response: The commentor apparently misunderstood the text of proposed section 66266.23(b) [hereafter identified as "subsection (b)"]. Subsection (b) actually prohibits the use of used oil for dust suppression or road treatment, if that oil is contaminated with dioxin or with other hazardous wastes. Subsection (b) allows the use of used oil for dust suppression or road treatment, if the oil is contaminated with a hazardous waste and that waste (not the used oil containing it) is a hazardous waste solely because it is ignitable. For example, if a used oil is contaminated with small amounts of vehicle fuel, then the used oil may be used for dust suppression or road treatment, provided that the vehicle fuel (not the combination of the used oil and the fuel) is hazardous only because the vehicle fuel is ignitable. However, the commentor believes that subsection (b) would allow the use of used oil for dust suppression or road treatment, if the used oil is hazardous only because the oil is ignitable. (The commentor did not address either the combination of the used oil and the hazardous-waste contaminant, or the hazardous-waste contaminant itself.) Thus, the commentor misunderstood the text of subsection (b). [Incidentally, the absence of the prohibition does not create an exemption from Department regulation; the applicable requirements in proposed sections 66266.20 through 66266.24 (if any) would still be in effect.]

Based on the commentor's misunderstanding of subsection (b), the commentor stated that subsection (b) is inconsistent with proposed Section 66266.23(c) [hereafter identified as "subsection (c)"]. Subsection (c) prohibits the use of used oil for dust suppression or weed control (versus dust suppression or road treatment, in subsection (b)), unless the oil: meets state statutory standards

for designation as "recycled oil" in Health and Safety Code sections 25250.1 (c), (d) and (e); contains less than 2 ppm of PCBs; and has not been mixed with other hazardous wastes. If the oil meets those requirements, then it is virtually unregulated by the Department (except for minor record keeping and notification requirements), regardless of the manner in which it is used, pursuant to Health and Safety Code section 25250.1(e). Clearly, subsections (b) and (c) differ. Thus, in order for the commentor's claim of inconsistency to be valid, it must be based: on whether the universes respectively addressed in subsections (b) and (c) overlap, if at all; and on whether the two subsections regulate any overlap differently, if at all.

The universe addressed in subsection (b) is the universe of used oil which is contaminated with hazardous wastes; the universe addressed in subsection (c) is the universe of used oil which is not contaminated with hazardous wastes. Thus, there should be no overlap of the two universes, so they should not be inconsistent.

Similarly, subsections (b) and (c), singly or together, are not inconsistent with Health and Safety Code section 25250.1, because presumably the commentor meant to address specifically subsection (a)(5) of that statutory section. That statutory subsection clearly excludes from the definition of "used oil", oil intentionally mixed with hazardous waste (as specified) and oil having a flash point less than or equal to 100°F. Thus, that statutory subsection merely limits part of the definition of "used oil" to oil accidentally mixed with hazardous wastes and sets the lower limit on the flash point of the oil, for purposes of subsections (b) and (c). Since the commentor did not elaborate on the commentor's claim of inconsistency between the statutory subsection and subsections (b) and/or (c), further response is impossible without the commentor's clarification.

Although the preceding paragraphs indicate that the commentor misunderstood subsections (b) and (c) and, based on that misunderstanding, incorrectly claimed that the subsections were inconsistent with each other and with statute, the Department believes that subsections (b) and (c) need clarification. Accordingly, they are being revised, partially in response to the above comment and also in response to recent changes in state law (AB 817, Ch. 1254, Stats. 1989), which became effective January 1, 1990.

Comment D1 - Review period

Commentor D - Department and Water and Power
The City of Los Angeles

Comment: "DWP believes that the proposed changes to the existing regulations are too complex for a 45-day review period only. It is requested that at a minimum, DHS extend the comment period to 90

days. This would allow additional review and development of alternatives."

Response to Comment: Government Code section 11346.4 requires a minimum 45-day public comment period. Because the majority of the regulations being adopted are restatements of existing State and federal law, the Department believes that the 45-day period is adequate. This comment was not accommodated.

Comment D2 - General

Commentor D - Department and Water and Power
The City of Los Angeles

Comment: "Preferably, DHS should include all the federal regulations and exemptions that are needed for conformance with the Resource Conservation and Recovery Act (RCRA) in their present form and leave any additional changes that make the regulations more "stringent" than RCRA for another separate rulemaking. In addition, DWP suggests that the proposed changes to the regulations be deleted or returned to their original wording where they have been altered to make Title 22 more restrictive than the previous regulations. Unless new scientific evidence has come forth showing a need for these changes in the existing regulations, they should not be altered."

Response to Comment: See Responses to Comments AA1 and AA2.

Comment D3 - General

Commentor D - Department and Water and Power
The City of Los Angeles

Comment: "DHS needs to demonstrate that the proposed changes in the regulations have some basis in scientific fact. Otherwise it becomes an ex parte rulemaking which does not improve public health and safety. DWP strongly opposes the instances where federal exemptions have been deleted or state regulations have gone beyond the requirements needed for conformance with RCRA. DWP believes that these should be covered in a separate rulemaking. This would assure that these changes are more effective than burdensome, and an opportunity is provided for developing consensus.

Response to Comment: The Department has attempted to limit the differences between the proposed regulations and the Department's existing regulations to changes necessary to effectively and clearly merge the requirements of existing state and federal law. The one major exception to this policy is the application of federal RCRA requirements to persons managing non-RCRA hazardous wastes. This decision was based on the importance of establishing one clear and uniform set of regulatory requirements. The

Department has described each new requirement and the basis for its adoption in the section by section discussion in the main body of this Statement of Reasons. Please see also the responses to comments AA1 and AA2.

Comment D4 and D17 - General

Commentor D - Department and Water and Power
The City of Los Angeles

Comment: "On numerous occasions, the proposed regulations go beyond the requirements of the Resource Conservation and Recovery Act (RCRA) as set forth in 40 CFR Sections 260-270 and, more importantly, beyond existing Title 22 Regulations. The Los Angeles Department of Water and Power (DWP) strongly objects to DHS going beyond the scope of the reason for the proposed rulemaking, which is namely to ensure conformance of the State's Title 22 Regulations with the Environmental Protection Agency's (EPA) RCRA Regulations. The sole stated purpose of achieving such regulatory conformance is the ability of the State to obtain RCRA authorization. DWP believes that if DHS wishes to tighten up its existing regulations, it should be done in separate rulemaking and not as part of this massive regulatory overhaul, which is by itself commanding lengthy and time-consuming scrutiny on the part of industry. Furthermore, DHS has not elucidated any scientific evidence that shows a need for going beyond the existing regulations. The 45-day comment period is not long enough to review all the proposed changes for RCRA conformity as well as those wherein State law is being exceeded. DWP believes that this proposed rulemaking should limit itself to only those changes necessary for RCRA authorization. Attachment A is a partial listing of examples as described above."

Response to Comment: As noted in the responses to Comments D3 and AA1, the Department did not use this rulemaking as an opportunity to "tighten up" its existing regulations. In fact, the Department will be following this rulemaking with an extensive clean-up package. The Department has also addressed the comment in the responses to comments D1, D3, AA1 and AA2. In addition to the section by section discussion of each regulation in the main body of this Statement of Reasons, the specific regulations listed in Attachment A are discussed in order below:

Definition of "Affected Medium" in Section 66260.10.

This definition simply clarifies the meaning of this term as used in the text of the regulations. As stated in the initial Statement of Reasons, this definition does not have regulatory effect and thus should not be construed as making the Department's regulations more onerous.

Definition of "Regulated Unit."

As noted in the initial Statement of Reasons, this definition was taken from existing 40 CFR section 264.90(a)(2). The definition was adopted as part of the consolidated definitions section in order to make it easier to locate. As specified in the initial Statement of Reasons, the originally proposed definition did not include the federal date. The final version of the definition more accurately tracks existing state and federal law.

Definition of "Existing tank system" or existing component" in Section 66260.10.

This section is based on the definition in 40 CFR section 260.10. There are two substantive changes from the existing federal section. The first is the addition of the word "transfer" in the list of impacted activities. This change is necessary to reflect the scope of the Department's current program. The second is the addition of an implementation date for tanks holding non-RCRA waste. This change is necessary to implement the Department's decision to apply RCRA management requirements to non-RCRA facilities.

Definition of "hazardous waste" in Section 66260.10.

This definition simply refers to the section of the regulation which defines hazardous waste based on the federal definition. The new language simply reflects the terms defined in Health and Safety Code sections 25117, 15117.9 and 25120.2 and existing title 22, California Code of Regulations, sections 66060 and 66742. This definition does not reflect changes to existing law.

Definition of "Identification Number or ID Number" in Section 66260.10.

The state program regulates a larger universe of hazardous waste than the federal government. This regulation was necessary to clarify that a distinction exists between federal (EPA) ID Numbers issued to persons handling federally regulated waste and ID Numbers issued to persons handling California only ("non-RCRA") hazardous waste. This definition is necessary due to the merger of state and federal requirements in this rulemaking.

Definition of "Non-RCRA hazardous waste" in Section 66261.2(d)(1)(B).

This comment was accommodated by the change from the requirement that a demonstration be made to the Department to a self-determination by the generator.

Section 66261.2(d)(1)(B):

This section is based on existing state law. Health and Safety Code sections 25143.2(e)(1) and (e)(2) require the regulation of hazardous wastes used in a manner constituting disposal or used to produce products that are applied to the land

as hazardous wastes even if they are recycled. The Department is preparing a follow-up regulation package which will exclude some wastes from this requirement.

Section 66264.25:

This comment has been accommodated in the final version of the regulation by a return to the federal language.

Section 66264.31:

This section is based on existing 40 CFR section 264.31 and 22 California Code of Regulations section 67120. The only substantive changes were the insertion of the word "located" and the deletion of the word "surface." These changes were necessary to conform to the requirements of 22 California Code of Regulations section 66300(f). There is no net effect on the regulated public.

Section 66264.5:

Each of the changes made to this section were necessary to write federal requirements into the state program context or otherwise facilitate the merger of state and federal requirements.

Section 66264.100(f):

This subsection differs from the federal requirement by changing an ambiguous reference to completion of corrective action "within a reasonable period of time" to a time period "specified by the Department in the facility permit." This change was necessary to clearly accommodate the authority specified in Health and Safety Code sections 25200(a) and (c).

Section 66264.273(d):

This section was modified by the post-hearing changes so that the only difference from the federal regulation is the addition of a requirement that a land treatment unit owner or operator must properly dispose of storm water. This change simply reiterates the existing requirement that run-off be properly managed.

Section 62264.312:

The only substantive change to the corresponding federal regulation was the deletion of subsection (b). This change was necessary because existing Title 22 California Code of Regulations does not allow the land disposal of solid ignitable wastes in landfills as allowed by that subsection.

Section 66265.4:

This comment was accommodated by the post-hearing change to this section.

Section 66265.25(b):

This comment was accommodated by the return to the federal language in the post-hearing charges.

Sections 66265.90(a),
66265.91(a)(3),
66265.91(b):

As noted in the Statement of Reasons for Article 6 of Chapters 14 and 15, the proposed Water Quality Monitoring and Response Program regulations are based not only on existing federal and Department regulations, but also on standards from the State Water Resources control Board regulations in Title 23 of the California Code of Regulations. Consequently, the regulations addressing this subject are unique within this rulemaking effort. The regulations in Article 6 of Chapter 15 are especially unique because they are based on the format of regulations in proposed Chapter 14 rather than on the format of the corresponding federal regulations.

Section 66266.2(b)(2):

This regulation is taken verbatim from existing Title 22, California Code of Regulations, section 66796(b)(2).

Section 66268.5(j):

This section was deleted by the first set of post-hearing revisions.

Section 6627010(f)(1):

The differences between this section and the corresponding federal provision are necessary to reflect the requirements of Health and Safety Code section 25201(b).

Section 66270.30:

With the exception of the change to subsection (h), the changes made to this section were made to accommodate the merger of state and federal requirements. The change to subsection (h) was necessary to clarify an ambiguity in the existing federal language.

Section 66270.34(m):

There is no such section in the proposed regulations.

Comment D5 - Various

Commentor D - Department and Water and Power
The City of Los Angeles

Comment: "In reviewing the proposed regulations, there were several instances where DHS dropped a Federal exemption or exclusion for the reason that it did not reflect California's more

stringent approach to hazardous waste management. (Attachment B is a partial listing of such occurrences.) DWP believes this is an arbitrary action on the part of DHS with little or no supporting scientific evidence that adopting the exclusion into California law would threaten or even jeopardize public health or safety. DWP believes such arbitrary actions have no place in this rulemaking. If the exclusion is currently in the Federal regulations and is not currently addressed in the California regulations, the exclusion should be adopted until such time as the exclusion is shown to pose a threat to human health or safety."

Response to Comment: The Department's decision not to reduce the stringency of California's existing hazardous waste management requirements by adopting federal exemptions not currently embodied in state law was not arbitrary. Not only has each such exemption been considered and rejected in the past, each exemption was reviewed and rejected as part of the drafting of the proposed regulations. The Department's general approach in this rulemaking was to neither tighten or loosen existing law. This comment was not accommodated.

Comment D6 Section 66261.3 (a)(2)(C)
(includes comment addressed to Section 66262.11 (b))

Commentor - Los Angeles Department of Water and Power

Comment summary: The commentor states that in the definition in proposed Section 66261.3 (a)(2)(C) a waste is presumed hazardous if it is listed in Appendix X, among other criteria, unless it can be demonstrated to be nonhazardous. This implies that the demonstration must be made to the Department. Currently, generators are allowed to determine whether their wastes are hazardous or nonhazardous using the criteria set forth in Title 22 without Department involvement. The commentor believes that because the burden for properly testing and assessing the hazardous characteristics of the waste is placed on the generator, the risk of incurring penalties and fines discourages mismanagement. To now need concurrence from the Department on all determinations would severely overload the Department's resources and cause industry considerable time, effort and expense to handle a nonhazardous waste as hazardous until concurrence was obtained. Also, placing nonhazardous wastes in Class I landfills would quickly deplete California's limited landfill resources. The commentor believes the Department should maintain the present self-certification process.

Comment response: The Department agrees with the commentor's comment. Waste classification was and is intended to be self-determining. The Department did not intend to change the current self-classification procedure to require generators to seek concurrence from the Department by "demonstration". The Department has modified the proposed regulations and changed the word "demonstrate" to "determine" in all applicable and relevant

sections to clarify that generators can self-classify their wastes. The presumption of hazardousness associated with a chemical listed in Appendix X does not preclude generators from self-classifying their wastes. Although a waste is listed in Appendix X and is presumed to be hazardous, the generator may rebut the presumption according to the procedure set forth in proposed title 22, Cal. Code Regs., section 66262.11. Subdivision (a) of Appendix X has been modified to clarify that wastes listed in the appendix are presumed to be hazardous; however, generators can self-determine if their wastes are nonhazardous according to the procedures set forth in title 22, Cal. Code Regs., section 66262.11.

Comment D7 - 66264.1

Commentor D - Los Angeles Department of Water and Power

Comment summary: The commentor recommends adopting the federal exemptions from the permit requirement for totally enclosed treatment units, elementary neutralization units, and wastewater treatment units. The commentor states that specified conditions and characteristics of the units, as noted by the EPA, make these exemptions desirable. Lastly, the commentor states that the Department must scientifically justify not including the exemptions and that their inclusion will not adversely affect the environment or the California regulatory scheme.

Response to comment: See response to comment T34

Comment D8 - Groundwater Monitoring

Commentor D - Los Angeles Department of Water and Power

Comment: "The proposed regulations make vast changes in ground water monitoring requirements at interim status and permitted facilities. These regulations are entirely new and not necessary for conformance with RCRA. If DHS wishes to alter these regulations, they should be done in a separate rulemaking as the changes will adversely impact existing facilities and may cause some facilities to be immediately in noncompliance. Minimally, existing facilities should have a grandfather clause to bring them into compliance with the proposed regulations over time.

As currently proposed, ground water monitoring will be immediately required at interim status facilities. The regulations should be modified to exempt hazardous waste management units that are in the process of closing or have not accepted any constituents of concern prior to promulgation of the final regulations. In addition, where it can be shown that no migration of hazardous substances has occurred, annual ground water monitoring and concomitant reporting requirements should not be required at inactive regulated units. Moreover, the regulated community should

only need to work with one agency on ground water monitoring. Currently, the Regional Water Quality Control Board also has regulatory authority over ground water monitoring. Dual agency control of this resource should be reduced when feasible."

Comment Response: As part of the effort to receive authorization for RCRA, the Department and the State Water Resources Control Board entered into an agreement to write parallel sets of water quality monitoring regulations that could be adopted by both agencies to provide consistent requirements for the regulated community. Although existing 40 CFR Part 264 Subpart F was used as the base document, extensive changes were made in order to incorporate the more stringent requirements in existing California regulations. As explained in the Statement of Reasons, this included several major structural changes and numerous minor modifications that allow the owner or operator and the permit writer greater flexibility to design an efficient monitoring program.

Most of the provisions of these proposed regulations are simply reflections of existing state and federal requirements. Very few requirements are "entirely new". Although it is true that some of the provisions are "not necessary for conformance with RCRA", each change that has been proposed is the result of the cooperative efforts of the State Water Resources Control Board, EPA and the Department. Every comment from the public has been carefully considered. Public comments resulted in several important modifications to the proposed regulations.

In response to this and other comments, a schedule of compliance has been added to allow 180 days after the effective date of the proposed regulations for the submittal of proposed monitoring programs that will satisfy the new requirements. Since the proposed regulations are expected to replace the existing federal requirements enforced by the Department and EPA, and since the proposed regulations parallel regulations being proposed by the State Water Quality Control Board, a monitoring and response program designed to satisfy the proposed regulations should satisfy the requirements of all three agencies.

It is anticipated that the majority of permitted facilities will require only minor modifications to their existing monitoring programs in order to comply with the provisions of the proposed regulations. Such facilities will be required to re-examine the statistical procedures in use for active monitoring programs and propose appropriate changes. All facilities will be required to clearly specify a list of constituents of concern for each regulated unit and establish background concentrations for all constituents in the water quality sampling and analysis plan. The list of monitoring parameters and the sampling methods and frequency for each regulated unit will be re-evaluated. These program modifications will result in more efficient use of monitoring resources and will provide a higher degree of protection to human health and the environment.

If compliance with the provisions of this article will require the installation of additional wells or other monitoring devices, the owner or operator shall implement the approved plans according to a schedule of compliance established by the Department.

Comment D9

Commentor D - Los Angeles Department of Water and Power

Comment: "DHS's basis for requiring ground water monitoring does not take into account regulated units where no likelihood of migration of constituents of concern will ever occur. To require monitoring and reporting at these facilities places an unnecessary burden on the regulated community. DHS should at least allow some flexibility on a case-by-case basis as to how the regulations will be enforced or grant a variance when appropriate."

Comment Response: The elimination of such an exemption from the proposed regulations is consistent with existing Subchapter 15. The Department does have broad authority to grant exemptions pursuant to H&SC Section 25143 and proposed Title 22 Section 66260.210. The owner or operator of a regulated unit that is not regulated pursuant to RCRA or that could be granted an exemption from federal monitoring requirements can petition the Department for an exemption pursuant to section 66260.210.

Comment D10

Commentor D - Los Angeles Department of Water and Power

Comment: "DHS is proposing that background levels be used as the standard against which to measure compliance with the regulations. Should a constituent of concern exceed background levels, cleanup will be required of all contaminated groundwater and other contaminated materials. This could effectively eliminate clean closure. DHS should be allowed to adjudicate whether this requirement is needed based upon data pertaining to that particular regulated unit."

Comment Response: Under the proposed regulations, the owner or operator of a regulated unit may propose concentration limits greater than background if all of the requirements of Section 66264.94 have been satisfied.

Comment D11

Commentor D - Los Angeles Department of Water and Power

Comment: "Furthermore, current Federal regulations establish levels of certain constituents which may be used where the background level is lower than the stated limit. This is not included in the proposed regulations. There will undoubtedly be several locations where cleanup to background limits is not necessary for protection of human health and safety. DHS should include in the proposed regulations Table 1 from 40 CFR Section 264.94 which gives maximum concentrations of constituents for ground water protection."

Comment Response: The change suggested in this comment has not been incorporated into the proposed regulations. The Department does not agree that the protection of human health and safety are the only considerations that must be made when establishing concentration limits for corrective action. The proposed regulations are consistent with existing Subchapter 15 requirements and with State Water Resources Control Board policy to prevent degradation of the waters of the state. Under the proposed regulations, the owner or operator of a regulated unit may propose concentration limits greater than background if all of the requirements of Section 66264.94 have been satisfied.

Comment D12

Commentor D - Los Angeles Department of Water and Power

Comment: "DHS has deleted the requirement in 40 CFR Section 264.94(c) regarding the use of the ground water for drinking purposes in determining applicability of the regulations. It seems that requiring a facility to clean up ground water, that has no potential for drinking water, to background levels is unnecessary. Obviously potential migration of constituents of concern to groundwater sources of drinking water should be monitored. However, when it can be demonstrated that this would not occur, cleanup to background levels should not be required."

Comment Response: The Department does not agree that degradation of the environment should be allowed simply because the ground water in question is not used for human consumption. However, based on other comments received from the USEPA, this requirement has been restored as Section 66264.94(i) in the proposed regulations. (Note: The proposed regulations do contain provisions for the establishment of concentration limits greater than background when such limits are protective of both human health and the environment. See Section 66264.94.)

Comment D13

Commentor D - Los Angeles Department of Water and Power

Comment: "DHS has proposed that contiguity of regulated units will be the criteria for determining whether separate ground water monitoring systems will be necessary. This does not conform with 40 CFR Section 264.95(b)(2) and imposes an unnecessary cost without an attendant increase in the protection of human health and safety. Prior State regulations had required only one ground water monitoring system where waste management units were close together. The corresponding Federal regulations that have not been included should be incorporated into the final regulations."

Comment Response: The change suggested by this comment has not been incorporated into the proposed regulations. Existing Subchapter 15 states : "If waste management units are located close together, separate ground water monitoring systems are <u>not necessarily</u> required for each unit provided that monitoring provisions will enable earliest detection and measurement of waste constituents that have leaked from the units. The regional board may establish appropriate compliance points for <u>contiguous</u> waste management units in such cases." (emphasis added)

Under the proposed regulations the Department has tried to emphasize the responsibility of the owner or operator to consider each regulated unit separately when designing an appropriate water quality monitoring program. There is nothing in the regulations to prevent the use of the same monitoring point in the monitoring program for two or more regulated units - as long as it is appropriate. It is expected, for example, that data from background monitoring points will frequently be shared by two or more units. The Department will, however, retain the requirement from existing Subchapter 15 that the water quality monitoring program must enable the earliest detection and measurement of a release.

Comment D14 - Various

Commentor D - Los Angeles Department of Water and Power

Comment: "The term "transfer" has been added to the existing definition of "hazardous waste facility" which currently includes treatment, storage, and disposal. It is unclear whether transfer, in the context of the proposed regulations, is intended to pertain to both on-site and off-site activities. DWP does not believe that on-site transfer (i.e., the handling, loading, unloading, etc.) of hazardous waste should be regulated by DHS. Such an action would severely limit a company's ability to effectively manage its internal hazardous waste activities.

With respect to off-site transfer, DWP recognizes the need for regulation of third-party facilities used as an intermediary site between the point of generation and its ultimate disposal site.

However, this term does not take into account "milk run" type transfers of hazardous waste within an organization. DWP believes that DHS should continue its support of "milk run" type operations as was recently evidenced in a rulemaking proposed earlier this year. DWP further believes that if the waste remains within the control and responsibility of the generator, as in "milk run" type transfers, assurances exist in the Title 22 regulations so that it will be properly managed.

To regulate transfers between a company's many facilities and the point of consolidation (i.e., via use of manifests, permitted facility, etc.) would be burdensome and result in less efficient consolidation, recycling, or resource recovery. Generally, only small quantities of hazardous wastes are generated at individual sites. Consolidating hazardous substances at one site promotes increased resource recovery and recycling due to cost-effectiveness. A company will be more inclined to recycled materials and thus transport hazardous wastes off-site without onerous reporting requirements. This will result in better environmental protection.

Response to comment: See response to comment T20

Comment D15 - section 66260.10 definition of "free liquids"

Commentor D - Los Angeles Department of Water and Power

Comment summary: The commentor is concerned that the definition of "free liquids" does not reference the paint filter test as a method for determining the presence of free liquids in a waste material. The commentor believes that the paint filter test should remain in the Title 22 regulations.

Comment response: The definition of "free liquids" has been amended to include a reference for the procedures to be used in determining free liquids by the paint filter test.

Comment D16 - section 66260.10 definition of "land treatment facility"

Commentor - Los Angeles Department of Water and Power

Comment summary: The commentor feels that the current definition of "land treatment facility" discourages the use of bioremediation for on-site treatment at hazardous waste sites.

Comment response: The commentor has misinterpreted the application of the definition for the term "land treatment facility". The bioremediation of spilled hazardous substances at a site as part of a remedial action does not make that site a land treatment facility. A land treatment facility is a PERMITTED hazardous waste facility at which hazardous wastes are incorporated into the soil for the purposes of degradation.

Comment D17 - Various

Commentor - Los Angeles Department of Water and Power

Comment: "On numerous occasions, the proposed regulations go beyond the requirements of the Resource Conservation and Recovery Act (RCRA) as set forth in 40 CFR Sections 260-270 and, more importantly, beyond existing Title 22 Regulations. The Los Angeles Department of Water and Power (DWP) strongly objects to DHS going beyond the scope of the reason for the proposed rulemaking, which is namely to ensure conformance of the State's Title 22 Regulations with the Environmental Protection Agency's (EPA) RCRA Regulations. The sole stated purpose of achieving such regulatory conformance is the ability of the State to obtain RCRA authorization. DWP believes that if DHS wishes to tighten up its existing regulations, it should be done in separate rulemaking and not as part of this massive regulatory overhaul, which is by itself commanding lengthy and time-consuming scrutiny on the part of industry. Furthermore, DHS has not elucidated any scientific evidence that shows a need for going beyond the existing regulations. The 45-day comment period is not long enough to review all the proposed changes for RCRA conformity as well as those wherein State law is being exceeded. DWP believes that this proposed rulemaking should limit itself to only those changes necessary for RCRA authorization. Attachment A is a partial listing of examples as described above."

The commentor then attaches a list of sections as comment D17.

Response to comment: See response to comment D4.

Comment D18 - various

Commentor - Los Angeles Department of Water and Power

Comment: "In reviewing the proposed regulations, there were several instances where DHS dropped a Federal exemption or exclusion for the reason that it did not reflect California's more stringent approach to hazardous waste management. (Attachment B is a partial listing of such occurrences.) DWP believes this is an arbitrary action on the part of DHS with little or no supporting scientific evidence that adopting the exclusion into California law would threaten or even jeopardize public health or safety. DWP believes such arbitrary actions have no place in this rulemaking.

If the exclusion is currently in the Federal regulations and is not currently addressed in the California regulations, the exclusion should be adopted until such time as the exclusion is shown to pose a threat to human health or safety."

The commentor attached a list of these sections as comment D18.

Response to comment: See response to comment D5.

Comment E1 - Section 66261, Appendix XII

Commentor E - Romic Chemical Corporation

Comment summary, E1.1: The commentor states that the Department should develop a hierarchy for the use of the California Hazardous Waste Codes that are set forth in Appendix XII. This would be important for the standardization of information gathered from the Department's manifests, Annual Reports, etc.

Comment response, E1.1: The Department agrees that developing a hierarchy for the use of the California Hazardous Waste codes would be important for the standardization of information gathered from the Department's manifests, Annual Reports, etc., is desirable. However, it is outside the scope of the current rulemaking.

Comment summary, E1.2: The commentor suggests that a statement be added to the proposed regulations which explains that the restricted codes take precedence over the non-restricted codes.

Comment response, E1.2: The Department agrees that adding a statement to the proposed regulations which explains that the restricted codes take precedence over the non-restricted codes is desirable. However, it is outside the scope of the current rulemaking.

Comment summary, E1.3: The commentor suggests that a code "(A)" should be added for wastes with a gaseous physical state.

Comment response, E1.3: The Department cannot accommodate this comment. Major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking.

Comment summary, E1.4: The commentor suggests a statement should be added to the proposed regulations that clarifies whether or not codes 741 and 751 refer to only those Halogenated Organic Compounds (HOC) listed in the Appendix III of section 66268.

Comment response, E1.4: The regulations are not required to be identical to federal law. State regulations may be broader in

scope or more stringent than federal law. The California HOC waste codes references all HOC's. The federal waste codes references specific HOC's.

Comment summary, E1.5: The commentor states that it is equally important for the standardization of the handling codes on the manifest. This would benefit the gathering of information.

Comment response, E1.5: The Department agrees that the standardization of the handling codes on the manifest is desirable. However, it is outside the scope of the current rulemaking. The manifest document is used for the tracking of hazardous waste shipment - cradle to grave. The manifests are not used for the gathering of information.

Comment summary, E1.6: The commentor suggests that the current handling codes be replaced by ones currently used for the Annual Reports. These codes are found in Appendix I of section 66264. These codes are more specific and are required on most reports which are generally compiled by generators from copies of returned manifests.

Comment response, E1.6: The regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law. The codes in Appendix 1 of section 66264 are the federal handling codes. The State handling codes are contained in Chapter 12, Appendix 66262. Both the State and federal handling codes are required on most reports which are generally compiled by generators from copies of returned manifests.

Comment: F1 - Chapter 11

Commentor: F - McDonnell Douglas

Comment: "The proposed regulation to handle empty drums as hazardous waste. Sec 66261.101 and 66261 Appendix XII."

Response to comment: The Department is partially accommodating this comment. In response to the comments concerning empty container regulations, the Department is including a restatement (with additions and clarifications) of current State law regarding empty containers in this package. The Department is not adopting 40 CFR 261.7 but is rather adopting a version which maintains the current State stringency in a more workable format. For a provision by provision justification of the proposed contaminated container regulations and their deviation from the corresponding federal law see the portion of the Statement of Reasons which addresses proposed Section 66261.7.

The provision of Section 66261.101 (b) which addresses empty containers (drums) simply establishes that those containers not regulated by the EPA pursuant to RCRA which are regulated in the State are non-RCRA hazardous waste. This section only clarifies which category of hazardous waste an empty container falls into; it does not establish which containers are regulated under the hazardous waste control law.

The entries in Appendix XII to proposed Chapter 11, the list of California Hazardous Waste Codes, for empty containers (511, 512, 513) again merely assign codes to those containers which are regulated under State law.

Comment F2 - 66264.1

Commentor F - Douglas Aircraft Company

Comment: "2. The application of hazardous waste treatment standards to totally enclosed enclosed treatment units, elementary neutralization units and wastewater treatment tanks. Sec 66264.1(g)(5) & (6) & 66265.1(d)(9) & (10)."

Commentor is reiterating his concern with the points raised on this issue in the Joint comments of commentor T.

Response to comment: See response to comment T34

Comment F3 - Section 66262.34

Commentor F - Douglas Aircraft Company

Comment summary: The commentor states that this proposed section which sets forth the on-site transfer and treatment of hazardous waste requirements needs to be modified to provide an effective regulatory program for hazardous waste management in the state.

Comment response: This rulemaking is intended to conform state and federal hazardous waste regulations. Changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking.

Comment F4.1 Section 66261.3 (a)(2)(C)
(includes comment addressed to Section 66262.11 (b))

Commentor - Douglas Aircraft Co.

Comment summary: The commentor is concerned about the demonstration requirement to the Department as referenced in title 22, Cal. Code Regs., sections 66261.3 (a)(2)(C) and 66262.11 (b).

Comment response: See response to Comment D-6 Section 66261.3 (a)(2)(C) (includes comment addressed to Section 66262.11 (b)).

Comment F4.2 Section 66261, Appendix X

Commentor - Douglas Aircraft Co.

Comment summary: The commentor is concerned about the presumption of hazardousness referenced in Appendix X of Chapter 11.

Comment response: The word "potential" was replaced with the word "presumed" to clarify that the listings of chemicals in Appendix X creates a presumption that a waste which consists of or contains a listed chemical is a hazardous waste. Subdivision (a) of Appendix X has been modified by post-hearing changes to clarify that generators whose wastes are presumed to be hazardous because the waste contains constituents listed in Appendix X can rebut the presumption by determining that their wastes are nonhazardous according to the procedures set forth in title 22, Cal. Code Regs., section 66262.11. As stated on pages 16-18 of the Final Statement of Reasons prepared as part of the Department's rulemaking (R-45-78) and filed with the Secretary of State on September 27, 1984, ..."a comprehensive system will be provided in statutory and regulatory form to identify hazardous wastes. The system will consist of the following:

1. Definition of waste, hazardous waste and extremely hazardous waste.
2. Lists of hazardous wastes and extremely hazardous wastes.
3. Criteria to identify hazardous and extremely hazardous wastes.

The interaction of these elements is illustrated in Figure 1 on page 18, which summarizes the requirements set forth in Section 66300, "Applicability" (the rationale will be discussed in subsequent pages)." The Department's rulemaking (R-45-78) further explains..."if it is not certain whether or not a waste can be defined by Section 25117 of the H&S Code, the hazardous waste lists of Article 9 , CAC, are consulted. If the waste is listed by common name or if it contains a listed hazardous substance, the waste should be managed as hazardous unless tested against the criteria proposed here. If known components of the waste are not on the lists, it must be determined whether any of the components are hazardous according to the criteria. If after assessing the properties of all known components, it is determined that one or more of them are hazardous, the waste is considered hazardous unless tested directly for hazardous properties. If a person believes that a waste is not hazardous because the concentration of a hazardous component is very low, the waste can be directly tested against the criteria."

In summary, if a waste or its components is listed in Article 9 of title 22, Cal. Code Regs., and the generator does not classify the waste according to the procedure set forth in title 22, Cal. Code Regs., section 66471, the waste is presumed hazardous. The list serves as the first tier of a multiple tier assessment procedure.

If a waste contains a listed hazardous material, the waste is presumed hazardous. If a generator decides to characterize his presumptively hazardous waste, the generator may subject the waste to the appropriate tests in Article 11 of title 22, Cal. Code Regs., to determine the hazardousness of his waste. Further, as set forth in title 22, Cal. Code Regs., section 66300 (a);

> "Except as provided in Section 66300 (b), 66300 (g), 66305 or 66310, all provisions of this chapter shall apply to the management of any liquid, semisolid, solid, or gaseous waste which conforms to the definition of hazardous waste in Section 25117 of the Health and Safety Code including but not limited to the following: (1) Waste which is hazardous pursuant to any criterion on Article 11 of this chapter and consists of or contains a hazardous material cited in Article 9 of this chapter, or is a hazardous sludge, residue, concentrate, leachate or ash originating from a waste."(emphasis added)

The presumption of hazardousness of Article 9 of title 22, Cal. Code Regs., was the Department's original intention as explained in the Final Statement of Reasons prepared as part of the Department's rulemaking (R-45-78) and exists in the current regulations as cited above. In 1985, the regulations did not eliminate the presumption of hazardousness of the chemicals listed in Article 9, instead the regulations provided for the self-classification procedure for generators and established the criteria to use to identify hazardous waste. The change in wording is a clarification of the current status of the regulations. The modification is rejected.

Comment F5 - Section 66261.3(e)(2)

Commentor F - McDonnell Douglas

Comment - "Classification of contaminated soil. Sec 66261.3(e)(2)"

The Department feels that the commentor is stating that the above referenced section goes beyond current State and federal law in regulating mixtures which would not be regulated currently. The Department agrees with the commentor and is deleting not only this subsection but also subsections (e) and (e)(1). See the response to comment I3 for a complete discussion of the mixture rules in the proposed regulations.

Comment F6 Section 66262.11 (b)

Commentor - Douglas Aircraft Company

Comment summary: The commentor is concerned about the lack of reference to de mimimis concentrations.

Response to comment: See response to comment M5.

Comment G1.1 & G1.2 - Section 66261.3 (a)(2)(C), Appendix X

Commentor - Pacific Bell Co.

Comment summary: The commentor states that in the listing of chemical names and common names in Appendix X, the proposed language has the word "presumed" replacing the word "potential" regarding the hazardous properties of the material. The commentor requests that the original language (the word "potential") be reinstated in the new California Code of Regulations in all appropriate sections and in Appendix X.
The commentor believes that because the proposed language in Appendix X replaces the word "potential" with the word "presumed", this conflicts with the State's current self-certification process.

Comment response: See response to Comment D-6 Section 66261.3 (a)(2)(C) (includes comment addressed to Section 66262.11 (b)).

Comment G1.3 Section 66262.11 (b)

Commentor - Pacific Bell Co.

Comment summary: The commentor believes that because the proposed language in Appendix X replaces the word "potential" with the word "presumed" this deletes the exemption for "deminimis quantities" of listed hazardous wastes and contradicts federal law.

Comment response: The word "potential" was replaced with the word "presumed" to clarify that the listings of chemicals in Appendix X creates a presumption that a waste which consists of or contains a listed chemical is a hazardous waste. Subdivision (a) of Appendix X has been modified by post-hearing changes to clarify that generators whose wastes are presumed to be hazardous because the waste contains constituents listed in Appendix X can rebut the presumption by determining that their wastes are nonhazardous according to the procedures set forth in title 22, Cal. Code Regs., section 66262.11.
Although a hazardous waste may be exempt from regulation under federal law, the Department need not adopt the exemption as a State standard. The Department may adopt regulations or standards which are more stringent or more extensive than federal regulations. Currently, the Department does not reference de minimis concentrations in regulation because the threshold concentration of chemicals for hazardousness will differ from chemical to chemical. De minimis concentrations may play a role in waste classification, in that, if the concentration of a hazardous constituent is low, a waste may not exhibit hazardous characteristics; and therefore, not be classified as hazardous. However, how low the concentration must be in order to be classified as nonhazardous will depend upon the constituent and must be determined on a case-by-case basis. The Department does not intend to adopt a de minimis concentration exemption. No change in regulation is proposed based upon this comment.

Comment G2 - Chapter 15

Commentor G - Pacific Bell

Comment: "Chapter 15, Section 66265 of the proposed CCR: Pacific Bell requests that "transfer" and "transfer stations" be clarified to mean "off-site" transfer and transfer stations only."

Response to comment: See response to Comment T20

Comment H1 - General

Commentor H - Sierra Club
Environmental Defense Fund

Summary of comment: The comment is directed to the relationship of the proposed regulations to Proposition 65. Specifically, the commentor focused on title 22, California Code of Regulations (22 CCR) section 12403 which implements Proposition 65. 22 CCR section 12403(a) establishes rebuttable presumption that a discharge or release of a chemical listed in 22 CCR section 12000 from an authorized hazardous waste disposal site probably will not pass into a source of drinking water for purposes of Health and Safety Code section 25249.5, provided that the site is subject to and in compliance with requirements of state or federal laws or other authorities aimed at avoiding contamination of surface or ground water. Section 12403(b) specifies that the presumption established in subsection (a) may be rebutted by, among other things, evidence that compliance with the relevant state or federal authority has failed to prevent contamination at similar sites under similar circumstances.

The commentor asserts that the Department's regulations have not succeeded in preventing contamination from hazardous waste facilities in the past. The commentor refers to the 1985 Nowhere to Go report that found that all commercial hazardous waste disposal sites in California were out of compliance with the Department's regulations. The commentor concluded that at least some of the Department's regulations have "failed" within the meaning of 22 CCR section 12403(b). The commentor urges the Department "to identify those portions of the current proposed regulations that, in its view, have 'failed to prevent surface or groundwater contamination' in the past, and under what circumstances. If the department contends that the current proposed regulations will in all cases, prevent contamination of potential drinking water sources, it will be necessary for the department to demonstrate in the record why it believes the current proposed regulations will be so much more successful than the requirements that have prevailed in the last half decade, and that led to the experience documented in the Nowhere to Go report. In light of that experience, bear assertions that improvements cannot substitute for a detailed demonstration that all pre-existing and

documented problems at hazardous and solid waste facilities with regard to leakage have been solved."

Response to Comment: The comment will not be accommodated. The commentor is provided an opportunity by 22 CCR section 12403(b) to rebut the presumption established by section 12403(a). Rather than work within the framework of section 12403, the commentor urges the Department to demonstrate in the rulemaking file that the proposed regulations will not fail to prevent surface or groundwater contamination. This is not the Department's responsibility as part of this rulemaking to prove a negative. In this rulemaking, the Department is implementing the mandate of Health and Safety Code section 25159(a) which requires the Department to conform its hazardous waste management standards with the corresponding regulations adopted by the federal government. Section 25159(a) allows the Department to adopt more stringent or more extensive regulations than the federal government. Indeed, the Department has incorporated the more stringent elements of Title 23 into the proposed regulations in Chapters 14 and 15 (see corresponding final Statement of Reasons discussion). It is the Department's position that compliance with the proposed regulations will prevent surface and groundwater contamination at regulated facilities.

Comment: I1 - Sections 66261.1(b)(2)(A)&(b)(2)(B)

Commentor I - International Technology

Comment: "The circumstances under which the Department can classify a material as a hazardous waste are unacceptably vague. A basis for the Department "to believe that the material may be a hazardous waste" must be specified. Similarly, since the purpose of this chapter is to identify and implement the definition in health and safety code section 25117, inclusion of the definition in this chapter provides no specific guidance to generators who are responsible for characterization their wastes and only serves to make this characterization more ambiguous."

Response to comment: The Department is partially accommodating this comment. The effect of the 40 CFR provision (40 CFR Section 261.1(b)(2)(i) and (b)(2)(ii)) which served as the basis for this regulation has been carefully analyzed. The effect of the reference to the RCRA statutory definition of hazardous waste in that 40 CFR provision applies only to the inspection, monitoring, and imminent hazard authorities referred to in that 40 CFR section. The Department agrees that supplanting the waste classification procedure found in Section 66261.3 with the statutory definition defeats the entire purpose of the waste classification regulations, namely, to set forth objective criteria for making waste classification decisions. The Department does, however, need authority parallel to the 40 CFR provision both for the purpose of satisfying the legislative mandate to gain authorization to run the State's program in lieu of the federal program and to gain the authority to inspect facilities potentially managing hazardous

waste and to sample and test materials that the Department believes may be hazardous waste.

The Department is changing Section 66261.1(b)(2) and eliminating Sections 66261.1(b)(2)(i), and (b)(2)(ii).

First, the Department agrees that Section 66261.1(b)(2)(B) exceeds both the authority required to satisfy the legislative mandate to gain authorization and the authority required to sample materials that the Department believes may be hazardous waste. The criteria and lists for classifying wastes found in existing State regulations and the characteristics and lists proposed in these regulations for classifying wastes were created to provide specific guidance for generators in determining if their waste meets the definition of a hazardous waste found in statute (Health and Safety Code section 25117.) Thus, Section 66261.1(b)(2)(B) is being deleted.

Second, Section 66261.1(b)(2)(A) will be incorporated into Section 66261.1(b)(2) because no further division into subsections is necessary. There is now only one regulatory provision in subsection (b)(2).

Thirdly, Section 66261.1(b)(2) is being modified to conform the the language of the corresponding 40 CFR section. The provision of 40 CFR Section 261.1(b)(2)(i) which applies the statutory definition of hazardous waste for the purposes of RCRA sections 3007 and 3013 is being moved into proposed subsection (b)(2). The reference to RCRA sections is being changed to references to State law as follows. RCRA section 3007 details the EPA's authority to inspect and sample wastes which it believes may be hazardous wastes pursuant to the statutory definition of hazardous waste; this reference is being changed to a reference to Health and Safety Code Section 25185, the Department's authority to inspect persons managing or potentially managing hazardous waste. RCRA section 3013 establishes authority for the EPA to require monitoring, analysis, and testing of materials at a facility which is handling or has handled hazardous waste if the EPA believes that there may be hazardous waste at the facility or if the EPA feels that a release of hazardous waste from such a facility would pose a hazard. This reference is being changed to a reference to Health and Safety Code Section 25187.1 which establishes equivalent authority in State law. The authorities granted the Department under this subsection apply only to wastes that the Department believes may be hazardous wastes at an operation which handles or has handled hazardous waste or that the Department feels may pose a hazard. This authority allows the Department only to either characterize the material it feels is a hazardous waste or to require its characterization. This characterization is done pursuant to the normal waste classification procedure in proposed Section 66261.3 rather than by applying the statutory definition in lieu of the normal waste classification procedure. If the materials are not classified as hazardous wastes by application of proposed Section 66261.3, they do not need to be managed as hazardous wastes.

Comment: I2 - Section 66261.3(a)(2)(C)

Commentor: I - International Technology

Synopsis of comment: It is unclear how, when, and to what degree the referred "demonstration" must be made.

Response to comment: The Department agrees that there is not clear direction in the proposed regulations regarding this demonstration. However, many other commentors raised the concern that the demonstration required by this section conflicts with the self determination of the rest of the waste classification regulations. The Department is changing the word "demonstrate" to the word "determine" to be consistent with the self determining provisions of the rest of the State and federal waste classification regulations. Therefore, the commentors concerns regarding the demonstration are resolved by replacing the requirement that the generator demonstrate that a waste is nonhazardous or hazardous with a requirement that the generator determine that a waste is nonhazardous or hazardous.

Comment: I3 - Section 66261.3(e)(1)&(e)(2)

Commentor I - International Technology

Comment: "The proposed text is misleading and would far exceed the authority of the existing regulations at 22CCR 66300 and 305. This text will likely lead generators and agency staff to imply that any sort of mixture containing characteristic wastes is hazardous, regardless of the chemical properties of the mixture or the circumstances under which the mixture occurred. The definition referenced at Health and Safety Code section 25117 is too vague to be practically applied and should be clarified. If the "mixture rule" is too broad, managing non-contaminated or slightly contaminated materials as hazardous waste becomes impractical. A clearer text would be "if it conforms to the definition ...25117, which may ~~including~~ but not be limited to..""

Response to comment: The Department is partially accommodating this comment. Analysis of the existing regulations (22CCR Section 66300(a)(2) and (a)(3)) shows that all the mixtures addressed in proposed Section 66261.3(e) are currently considered to be hazardous waste if they conform to the statutory definition of a hazardous waste (Health and Safety Code Section 25117) except as provided in:

Section 66300(b) - Radioactive wastes are not hazardous wastes

Section 66300(g) - Emptied household hazardous material and pesticide containers which meet stated criteria are not hazardous waste

nonhazardous if they do not exhibit a characteristic of a hazardous waste.

Section 66261.3(a)(2)(E) addresses mixtures of listed RCRA hazardous wastes which have not been delisted pursuant to 40 CFR Sections 260.20 and 260.22. It states that, with stated exceptions, these mixtures are hazardous waste. This is consistent with federal law.

Section 66261.3(b)(3) addresses hazardous wastes, including mixtures of hazardous wastes, stating that materials in that category become hazardous wastes when they first exhibit a characteristic of a hazardous waste. This provision is consistent with federal law.

Section 66261.3(e) is being deleted from the regulation package. Analysis of existing law demonstrates that this section as proposed was incorrect and, if corrected, unnecessary.

Comment: I4 - 66261.4

Commentor I - International Technology Corporation

Comment: "The exclusions from regulation as solid or hazardous wastes under RCRA should be retained for waste which would otherwise be RCRA only waste. For example, a mixture of domestic sewage and treated residue from listed wastes should retain the 40 CFR 261.4 exclusion. Otherwise, POTW's, their sewage systems and other appurtences would be regulated under this chapter."

Response to comment: The Department is partially accommodating this comment. Materials excluded from classification as solid waste or hazardous waste pursuant to 40 CFR Section 261.4 are not RCRA hazardous wastes; however, these materials can be non-RCRA hazardous waste if they are identified as waste pursuant to Section 66261.2 and they exhibit a characteristic of a hazardous waste pursuant to proposed Article 3 of Chapter 11. A new subsection, Section 66261.4(b)(3), is being added which states that these federally exempted materials are not hazardous waste unless they exhibit a characteristic of a hazardous waste.

The Department cannot, however, completely adopt the exemptions from regulation found in 40 CFR Section 261.4 without carrying out a scientific study of the hazards posed by such wastes. This type of scientific study and creation of exemptions not currently recognized in State law is beyond the scope of this rulemaking.

The Department is adding a new subsection (b)(3) to Section 66261.4 which states that wastes excluded from classification as solid waste or hazardous waste pursuant to 40 CFR Section 261.4 are not hazardous waste unless they are classified as waste pursuant to Section 66261.2 and exhibit a characteristic of a hazardous waste. In that case, they are classified as non-RCRA hazardous waste. The

Section 66305 - Normal waste classification procedure (including application of the statutory definition of hazardous waste), approval to manage an otherwise hazardous waste as if it were nonhazardous

Section 66310 - Variance authority

The Department has concluded that the reference to Section 66305 applies the normal waste classification procedure to these mixtures. The proposed mixture rule is inconsistent with the existing mixture rule in that it does not apply the characteristics to these materials along with the statutory definition of a hazardous waste. Because other portions of proposed Section 66261.3 apply to mixtures which contain a waste listed in article 4 of proposed Chapter 11 (Sections 66261.3(a)(2)(D), (a)(2)(E), (b)(2), and (d)(2)) and mixtures of wastes which exhibit a characteristic of a hazardous waste (Sections (a)(2)(A), (b)(3), and (d)(2)), proposed Section 66261.3(e) is redundant if it is modified to apply the characteristics of a hazardous waste to determine if these materials are hazardous. Since the Department has determined that existing law applies the characteristics and the statutory definition of a hazardous waste to all mixtures, the Department is deleting proposed Sections 66261.3(e), (e)(1), and (e)(2) because they fail to satisfy the necessity standard. Thus, the commentor's suggested language will not be incorporated.

This classification scheme determines whether a waste must be discarded in a hazardous waste (class I) landfill. Discarded materials not identified as waste must still be discarded in a manner approved for waste. The purpose of the hazardous/nonhazardous classification is to determine if the discard of a particular waste material needs the extra safeguards of a hazardous waste landfill as opposed to a municipal solid waste landfill. Thus, the Department may require remediation of contaminated soils not identified as hazardous waste because they pose an environmental or health problem. Those nonhazardous soils must then be disposed in a manner consistent with the rules of the agencies regulating nonhazardous waste, that is, the State Water Quality Control Boards and the California Waste Management Board.

Note, however, that the application of the statutory definition to waste classification is being modified in the proposed regulations in response to comments stating that that definition is too vague for practical application by the regulated community. This classification criteria is now applicable only by the Department when the Department can demonstrate that waste meets that definition. Generators will no longer be required to apply that statutory definition to make waste classification determinations.

The mixture rules are found in section 66261.3 and are as follows:

Section 66261.3(a)(2)(D) addresses mixtures of listed RCRA hazardous wastes listed with hazard codes other than (T) or (H) with other materials. These mixtures are declared to be

Department chose to retain a reference to that 40 CFR section rather than include all the verbiage contained therein in order to avoid inclusion of a lengthy confusing section which will have little practical applicability.

The commentor also stated that discharges to a POTW (publicly owned treatment works) would be regulated under these proposed regulations. This statement is correct if those discharges exhibit a characteristic of a hazardous waste. Those discharges are currently regulated as hazardous waste under State law because they are not specifically exempted from regulation. The proposed regulations duplicate the effect of the existing regulations by not including an absolute exemption for discharges to a POTW.

The POTW, its sewage system, and other appurtences would indeed be regulated under these regulations. Under both existing State and federal law, a qualifying POTW has a permit by rule to receive hazardous waste. A non-qualifying POTW is regulated under this chapter and must obtain a hazardous waste facility permit if it accepts hazardous waste. Under both existing State law and these proposed regulations, a POTW receiving only waste exempted from federal regulation but regulated under State law would be required to obtain a permit if the waste sent to the POTW exhibited a characteristic of a hazardous waste. This situation represents no change from the status quo.

Comment: I5 - 66261.4(a)(2)

Commentor I - International Technology Corporation

Comment: "This section is meaningless unless the radioactive material can be completely separated out of the waste."

Response to comment: The Department does not agree that this provision is completely meaningless. Mixtures of all types of materials with hazardous waste and hazardous material are regulated as hazardous waste. These mixed radioactive and hazardous wastes must be hazardous by consideration of only the portion of the waste material not classified as source, special nuclear, or by-product material by the Federal Atomic Act. This situation is no different than the situation of a mixture of any nonhazardous material with a hazardous waste.

In order to clarify the meaning of this section, the Department is adding a statement that any radioactive waste material is identified as a hazardous waste only if it is a mixture and the substances mixed with the radioactive material cause the waste to be identified as a hazardous waste.

Comment I6 - Section 66261.4

Commentor I - International Technology

Comment: "This section should have retained Sections 261.4(e) and (f) from the federal regulations. At a time when the State should be encouraging treatability studies to expedite cleanup and closure of facilities, the Department should follow the federal regulations in this area. These tend to remove some of the roadblocks to collecting, transporting, storing, and testing the smaller, but sufficient quantities of sample materials needed for treatability tests. In addition, treatability tests, to be optimum, must be allowed a measure of flexibility, Federal Sections 261.4(e) and (f) provide this. The federal government adopted these Sections in July, 1988 only after extensive review and public input. It is to the State's advantage to include them in this revision of the State code."

Response to comment: The Department cannot accommodate this comment. While the Department agrees that some form of these exemptions would be desirable in State law, scientific study of the consequences of adopting these exemptions would be required to adopt them. This rulemaking is intended to merely meld existing State and federal law into a set of regulations which will allow the Department to meet the mandate of Health and Safety Code section 25159 to gain authorization to administer the State hazardous waste control program in lieu of the federal program. The Department does, however, recognize the need for flexibility in carrying out treatability studies to help the regulated community develop viable treatment alternatives to land disposal of untreated hazardous waste and will adopt some version of the federal exemptions in a separate rulemaking.

Comment I7 - Section 66261.22 (a)(3) and (a)(4) and Comment I9 Section 66261.101 (a)(2)

Commentor - International Technology Corporation

Comment summary: "Corrosivity will only occur in the presence of water for wastes falling under these two sections. Therefore, when it can be shown that there will an absence of water, these wastes should not be subject to classification as non-RCRA hazardous solely based on this characteristic (corrosivity). They may, however, be RCRA or non-RCRA hazardous wastes based on other characteristics."

Comment response: As stated on page 132 of the Final Statement of Reasons prepared as part of the Department's rulemaking (R-45-78) and filed with the Secretary of State on September 27, 1984,..."(t)he Department believes that the EPA criteria are sufficient and adequate to define corrosive wastes with the exception that the criteria must also identify those substances which can form corrosive solutions when contacted with water. Thus, an additional criterion is added to identify, as corrosive, those wastes which produce strongly acidic or alkaline solutions. The reasons for including these criteria are as follows:

a. Due to the high probability that improperly disposed wastes will contact water and the environmental impacts will be the same as if an aqueous solution of the wastes were involved.
b. Exposure of such a substance to persons or animals can cause tissue damage as a result of exposure to moisture in skin and eyes."

Further, classification of wastes are not made based upon proposed management activities of the waste (i.e., "there will be an absence of water"), rather, classification is based upon the characteristics exhibited by the waste itself. Alternative management activities may be considered as a part of the basis for issuing a variance on a case-by-case situation. The modification is rejected.

Comment I8 Section 66261.33 (e)

Commentor - International Technology Corporation

Comment summary: "The Table in this Section shows an asterisk (*) preceding some of the waste codes. However, there is no explanation for this symbol."

Comment response: The asterisk notation the commentor is questioning is in the Working Copy Document only. The July 1, 1987 edition of the Code of Federal Regulations was used as the base language for the proposed regulations. Changes in regulation published in the Federal Register since the July 1, 1987 edition of the Code of Federal Regulations were denoted with an asterisk for internal tracking by the Department. The asterisks do not serve a

regulatory purpose, and therefore, were not included in the proposed regulations.

Comment I9 Section 66261.101 (a)(2)

Commentor - International Technology Corporation

Comment summary: "See comment to 66261.22 (a)(3)&(4)"

Comment response: See response to Comment I7 Section 66261.22 (a)(3) and (4).

Comment I10 Section 66261.101 (b)(2)

Commentor - International Technology Corporation

Comment summary: "The proposed text is misleading and would far exceed the authority of the existing regulations at 22CCR 66300 and 305. This text will likely lead generators and agency staff to imply that any sort of mixture containing characteristic wastes is hazardous, regardless of the chemical properties of the mixture or the circumstances under which the mixture occurred. The definition referenced at Health and Safety Code section 25117 is too vague to be practically applied and should be clarified. If the "mixture rule" is too broad, managing non-contaminated or slightly contaminated materials as hazardous waste becomes impractical. A clearer text would be "if it conforms to the definition ...25117, which may ~~including~~ but not be limited to...""

Comment response: The Department is accommodating the commentor's comment by eliminating title 22, Cal. Code Regs., section 66261.101 (b)(2). For a detailed discussion on the mixture rule, see the response to Comment I-3 Section 66261.3 (e)(1) and (e)(2).

Comment I11 - Section 66264.52 (a)

Commentor I - International Technology

Comment: "Modifying the language from 'surface water' to just 'water' would mean that a non-sudden release to ground water would be covered by the facility contingency plan. This is both unnecessary from an emergency point of view, and is covered under existing regulations regarding ground water monitoring."

Response: The Department agrees with the commentor's concern. This comment therefore has been accommodated by changing the language of proposed regulations (Section 66264.52 (a)) from "water" to "surface water".

Comment I12 - Section 66264.73 (b) (1)

Commentor I - International Technology Corporation

Comment summary: The commentor states that the proposed language would require a description of wastes and waste quantities, methods, and dates for any waste transfer at a facility. In the case of a facility with multiple impoundments, waste descriptions and quantities may be difficult to describe in any amount of detail. The commentor recommends that this section clarify what type of information is required.

Comment response: The Department cannot accommodate this comment. Major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking. The Department notes, however, that the proposed section does set forth what type of information is required. Section 66264.73 specifies that the description, quantity and handling method of each hazardous waste shall be recorded as required by Appendix I. The Appendix sets forth how to describe a waste and where to obtain the description. In addition, the Appendix sets forth how to describe the quantity of waste. The handling methods are listed directly in the appendix. Using Appendix I will provide adequate assistance to describe the wastes and quantities for a facility with multiple impoundments.

Comment I13 - Section 66264.94

Commentor I - International Technology

Comment: "This section contains numerous references to ground water monitoring of each regulated unit. As allowed by 66264.95(b)(2) and 66264.97(e)(3), contiguous units may have a single monitoring program. We suggest the language of 66264.94 be modified where appropriate to include reference to each regulated unit or "group of units as allowed by 66264.94(b)(2), and 66264.97(e)(3)."

Comment Response: Under the proposed regulations, contiguous regulated units may share a point of compliance and all or part of a monitoring system (i.e., the wells or devices used to sample water quality). Each unit is, however, to have its own monitoring program, designed specifically to either detect or remediate releases from that unit. The Department believes that this provision will provide the most flexibility to design an efficient monitoring program that eliminates unnecessary duplication of effort.

Comment I14 - Section 66264.95(b)(2)

Commentor I - International Technology

Comment: "This section describes the use of a waste management area (group of units) which may be monitored as 1 unit. We suggest the language be clarified as it is somewhat confusing as to whether "release from that regulated unit" refers to the waste management area."

Comment Response: The first sentence of this comment is not correct. The proposed regulations do not allow an owner or operator to automatically monitor contiguous units as if they are 1 unit. The proposed regulations do allow certain contiguous units to share a common point of compliance and to share all or part of their water quality monitoring systems (i.e., the wells or devices used to sample water quality) if it is appropriate to do so. Each unit is, however, to have its own monitoring program, designed specifically to either detect or remediate releases from that unit. The Department believes that this provision will provide the most flexibility to design an efficient monitoring program that eliminates unnecessary duplication of effort.

For consistency with federal requirements, the proposed regulations retained the concept of a waste management area for the purpose of defining the point of compliance. In response to this and other comments, and for the purpose of clarity, this section has been rewritten as follows: "(2) If the facility contains contiguous regulated units <u>and monitoring along a shared boundary would impair the integrity of a containment or structural feature of any of the units,</u> the waste management area may be described by an imaginary line along the outer boundary of the contiguous regulated units. ~~If the water quality monitoring program for each unit will enable the earliest possible detection of a release for that regulated unit.~~ <u>This provision only applies to contiguous regulated units that have operated or have received all permits necessary for construction and operation before the effective date of this article.</u>"

Comment I15 - Section 66264.97(b)(1)B.3

Commentor I - International Technology

Comment: "Detection monitoring should not be required for aquifers other than the uppermost aquifer unless contamination of the uppermost aquifer has been found."

Comment response: No change has been made to the proposed regulations based upon this comment because, for a detection monitoring program, the ground water quality monitoring system must be designed to allow the earliest possible detection of a release from the regulated unit. If site hydrogeology indicates that contaminant flow could be detected in a lower aquifer before being

detected in monitoring wells in the uppermost aquifer, the system must be designed to include wells at appropriate locations in the lower aquifer. Note : Proposed Section 66264.97(e) requires that the ground water monitoring system must be designed and certified by a registered geologist or registered civil engineer.

Comment I16 - Section 66264.97(b)(3)

Commentor I - International Technology

Comment: "This section makes no allowance for Department of Water Resources programs which have been given to county administrations. Numerous Counties within the State now administer well installation programs."

Comment response: In response to this and other comments this section has been modified as follows: "(3) Copies of drillers' logs shall be filed with the Department of Water Resources (DWR) <u>or with agencies authorized by DWR to collect these copies</u> on forms provided by DWR pursuant to California Water Code Section 13751 (form DWR 188-Rev 12-86).

Comment I17 - Section 66264.97(e)(3)

Commentor I - International Technology

Comment: "Language needs to be modified to clearly state which is a unit and which is a group of units."

Comment response: The definition of a regulated unit is found in section 66264.90. The word "unit" is never used in the proposed regulations to refer to a group of units. Under the proposed regulations the Department has tried to emphasize the responsibility of the owner or operator to consider each regulated unit separately when designing an appropriate water quality monitoring program. The proposed regulations do allow certain contiguous units to share a common point of compliance and to share all or part of their water quality monitoring systems (i.e., the wells or devices used to sample water quality) if it is appropriate to do so. It is expected, for example, that data from background monitoring points will frequently be shared by two or more units. Each unit is, however, to have its own monitoring program, designed specifically to either detect or remediate releases from that unit. The Department believes that this provision will provide the most flexibility to design an efficient monitoring program that eliminates unnecessary duplication of effort.

Comment I18 - 66265.112(b)(9)(A)

Commentor I - International Technology Corp.

Comment: "The DHS already has the authority to request information relevant to their review and approval of a closure plan (H&S 25200). A requirement for a risk assessment as part of a closure plan is unnecessary and burdensome to an applicant. If, during closure Plan review or based on DHS' knowledge of a particular facility, they determine a risk assessment to be necessary, statutory authority allows them to require one."

Response to comment: See response to comment I21

Comment I19 - Section 66265.114

Commentor I - IT Corporation

Comment summary: Above referenced section be amended to incorporate language providing for a determination of whether generated wastes are hazardous or non-hazardous based on the existing language in 26 CCR 22-66305.

Response: This comment is not clear. We have responded based upon the presumption that the comment does not refer to section 66265.14, but rather to section 66265.114, because section 66265.14 pertains to facility security and has nothing to do with a determination of whether a waste is hazardous or not. In contrast, section 66265.114 deals with removal of hazardous waste during closure and points out that the owner or operator may become a generator of hazardous waste during closure process.

The comment seems to request that the Department add a cross reference to Title 26, California Code of Regulations, section 22-66305. (In the proposed regulations, this is section 66260.200.) This section does not describe classification of wastes as hazardous or non-hazardous, and thus the comment's suggestion may clarify section 66265.114 to a degree. However, the Department cannot accommodate this comment. The proposed language corresponds with the corresponding sections in both 40 Code of Federal Regulations and Title 22. Major changes other than those described in the Statement of Reasons of the proposed regulations are outside the scope of this rulemaking.

Comment I20 - Section 66265.117 (f)

Commentor I - IT Corporation

Comment: "This language is vague to the extent that it is not clear which portions of the hazardous waste facility are subject to this condition (presumably only those portions containing waste or

part of a containment monitoring system) and it is not clear what is meant by a variance."

Response: The referenced regulation has been taken directly from the existing Title 22 California Code of Regulations (CCR) Section 67217 (f). As current Title 22 CCR regulation is written all portions of a "hazardous waste facility" (as defined in proposed Section 66260.10) are subject to this condition.

A new language, "no variance may be granted except as provided in subsection (d) of this section" has been added at the end of this section to clarify the "variance" requirements as stated in Section 66265.117 (f) of the proposed regulation.

Comment I21 - Section 66265.118 (c) (5)

Commentor I - IT Corporation

Comment summary: A requirement for a risk assessment as part of post-closure plan is unnecessary and burdensome to an applicant.

Response: The Department has deleted the requirement of a quantitative risk assessment as part of a post-closure plan from the proposed regulations by deleting sections 66265.112(b)(9)(A) and 66265.118 (c) (5)

Comment I22 - Section 66265.143

Commentor I - International Technology

Comment summary: This commentor recommends the Department adopt the use of annuities issued by an insurance company or other financial institution to provide financial assurance for closure and/or post- closure.

Comment response: This comment will not be accommodated. The current authorization process involves combining and ensuring compatibility of existing state and federal regulations. The inclusion of a new financial mechanism, not authorized by federal regulations cannot be considered for Resource Conservation and Recovery Act regulated facilities in the current regulatory revision process.

Comment I23 - Section 66265.143(a)(3)

Commentor I - International Technology

Comment summary: This commentor recommends the Department define the term "life of the facility" as used in this section. There

could exist confusion where the expected useful life based on constructed or planned capacity exceeds the term of the facility permit, or where the closure cost estimate is based on the sum of costs for several waste management units, each of which has a different expected life.

Comment response: This comment has been accommodated. Please note, the complete phrase is "operating life of the facility". "Operating life of a facility" is synonymous with the term "active life of a facility". Both of these terms are used throughout the regulations. "Active life", however, is defined in section 66260.10.

Section 66260.10 will be amended to include "operating life" as part of the definition of "active life" (i.e., active life/operating life). Section 66260.10 will also contain a cross reference for "operating life/active life".

Comment I24 - Section 66268.1, Statement of Reasons

Commentor - International Technology

Comment summary: There are two items in the comment: (1) The Statement of Reasons referring to Section 66268.1 does not explain why 40 CFR 268.6 was deleted. This section allows for an exemption from the land disposal restrictions based on a petition to the U.S. EPA Administrator demonstrating that hazardous wastes will not migrate from the disposal unit, and (2) The Statement of Reasons does not make clear whether a variance granted by the U.S. EPA will be processed by the Department.

Comment response: For the first item, the Statement of Reasons referring to 40 CFR Section 268.6 already explains why this federal provision was deleted in the proposed regulations. However, for the purpose of clarity, the comment is accommodated by adding an explanation in the Statement of Reasons referring to Section 66268.1 similar to that made for the reasons given for deleting 40 CFR Section 268.6. For the second item, the comment is also accommodated. The Statement of Reasons has been revised to state that a variance approved by the U.S. EPA pursuant to 40 CFR Section 268.6 will be required by the Department in order to consider granting an exemption to use a land treatment facility pursuant to Health and Safety Code Section 25179.12.

Comment I25 - Section 66268.1 Subsection (c)

Commentor - International Technology

Comment summary: The commentor recommends that an exemption to the land disposal restriction be allowed for restricted wastes which are removed, treated, and redeposited on site in the same hazardous

waste facility resulting from actions taken under an approved closure plan.

Comment response: The 40 CFR Section 268.1 (c) which is the basis for the proposed regulation does not allow for an exemption for wastes removed from a hazardous waste disposal facility as a result of closure. The commentor's recommendation is beyond the scope of this rulemaking. Therefore, the comment cannot be accommodated. However, the commentor is advised to make this recommendation to U.S. EPA so that U.S. EPA can consider accommodating this suggestion in future rulemakings.

Comment I26 - Statement of Reasons: Deletion of 40 CFR 268.4

Commentor - International Technology

Comment summary: The commentor states that 40 CFR Section 268.4 should be incorporated into the proposed regulations. This section exempts surface impoundments from the land disposal restrictions, subject to specified conditions. The commentor states that the reasons given for deleting 40 CFR Section 268.4 are not valid. As the commentor points out, the Statement of Reasons stated that this section is being deleted because Section 25208.4 (c) of the Health and Safety Code prohibits the discharge of restricted hazardous wastes into surface impoundments. However, that section allows the discharge of restricted waste into surface impoundments pursuant to specified exemptions.

Comment response: The Statement of Reasons has been amended to include the reasons for not adopting 40 CFR Section 268.4. The Department acknowledges that the commentor was correct in pointing out that the Statement of Reasons for deleting this section contained errors. The comment has been accommodated in prior rulemaking by adopting Section 67700(c)(3), Title 22, CCR, which allows prohibited waste to be disposed in a surface impoundment if the waste is disposed in accordance with Health and Safety Code Section 25179.11.

Comment I27 - Section 66270.30 (h)

Commentor I - I.T. Corporation

Comment: The 30 day time limit causes facilities difficulty to amply comply with furnishing information. The requirement should remain "within a reasonable time."

Comment response: This comment was not accommodated. The phrase "not to exceed 30 calendar days unless a time extension is approved by the Department" is necessary to define the term "reasonable time", which by itself is ambiguous and, therefore, makes the regulation difficult for facilities to comply with and for the

Department to enforce. Thirty calendar days should provide sufficient time for facilities to respond to most information requests from the Department. In those cases requiring additional time, the revised regulation allows the facility to request Department approval of an extension to the 30 days.

Comment I28 - Section 66270.42 (a) (2)

Commentor I - I.T. Corporation

Comment I28.1: The 30 day notification prior to implementing Class 1 modifications exempt from CEQA (for which approval from the Department is not required) is overly burdensome and derives no benefit for either party involved.

Response: This notification requirement has been established because of the following reasons:

1. 30 days of advance notice prior to the planned modification provides sufficient time to the Department to determine if the proposed modification is actually a Class 1 modification. And,

2. Based on the above determination the Department can evaluate whether the proposed modification is actually exempt from the California Environmental Quality Act (CEQA).

The above determinations are important to ensure compliance with the CEQA, and to adequately protect public health and environment.

Comment I28.2: The notification requirement in the proposed referenced section should reflect that specified in 40 CFR 270.42, that a Class 1 modification not requiring prior approval should only need a notification seven days after implementation of the change.

Response: Because of the reasons specified above the Department feels that even if the owner/operator of the facility considers this modification to be exempt from CEQA, a sufficient advance notice (at least 30 days) is necessary prior to implementing a Class 1 modification. Therefore, this comment was not accommodated.

Comment I29 - Section 66265.143

Commentor I - International Technology

Comment summary: This commentor recommends the Department adopt the use of annuities issued by an insurance company or other financial institution to provide financial assurance for closure and/or post-closure.

Comment response: See response to comment I22.

Comment J1 - Section 66261.24 (a) (includes comment addressed to Section 66261.101)

Commentor - Southern California Gas Co.

Comment summary: "In November of this year, the federal TCLP is expected to be adopted by EPA. Currently California-only waste, such as exploration and production (E&P) wastes, are subjected to the California Waste Extraction Test (WET) for characterization. According to the current DHS proposal, once the TCLP is adopted by EPA, California will be required to incorporate it into the new regulations because, in all probability, it is more stringent than the WET. This would cause some E&P waste currently classified as nonhazardous according to the WET to be classified as hazardous. The economic and regulatory burden would be enormous and unjustified since the EPA recently concluded (in a Congressionally mandated study of E&P wastes) that regulation of these waste streams under current state laws is adequate and that regulation under Subtitle C of RCRA is not warranted. SoCalGas suggests that the California Waste Extraction Test continue to be used to characterize wastes that are exempt under RCRA."

Comment response: The incorporation of the use of the Toxicity Characteristic Leaching Procedure for waste classification is not within the scope of this rulemaking package. As explained in the Initial Statement of Reasons, pages B-1 through B-3, this rulemaking is part of the Department's effort to obtain authorization from the EPA to administer and enforce the State's hazardous waste control program in lieu of the federal program. The EPA originally proposed the use of the Toxicity Characteristic Leaching Procedure for identification of the Toxicity Characteristic on June 13, 1986 (51 FR 21648) and issued a supplement to the proposed rule on May 19, 1988 (53 FR 18024). A final rule was published on March 29, 1990 (55 FR 11798). The use of Toxicity Characteristic Leaching Procedure for identification of the Toxicity Characteristic will be effective on September 25, 1990 for large quantity generators and on March 29, 1990 for small quantity generators. The incorporation of the Toxicity Characteristic Leaching Procedure in State regulations will be the subject of a separate rulemaking package. The Department will need to extensively review the Toxicity Characteristic Leaching Procedure prior to incorporation in State regulations, in part, to determine if it is more stringent than the Waste Extraction Test. The Department will provide a public comment period and solicit input from the regulated community at such time. The EPA's adoption of the Toxicity Characteristic Leaching Procedure will not require a change in State law for at least one and a half years and will not effect the granting of authorization by the EPA. To determine if a waste exhibits the characteristic of toxicity under State law, the Waste Extraction Test as set forth in title 22, Cal. Code Regs., section 66261.24 (a)(1) or (a)(2) will be the applicable test methodology until a formal change in the Department's regulations is completed. No change is proposed based upon this comment.

Comment: J2 - Chapter 11

Commentor J - Southern California Gas

Comment: "Existing DHS policies allow generators to (a) return empty chemical drums to the supplier for refilling without manifesting or compliance with other hazardous waste regulations and (b) manage drums that have been triple rinsed as nonhazardous. The proposed regulations do not acknowledge the existence of these policies.

SoCalGas believes that these policies allow for the expeditious recycling of used drums back to the suppliers. As drafted, the new regulations would require that the suppliers be permitted by DHS and that all drums be disposed or recycled at a permitted TSD facility. The revisions would result in higher disposal costs and encourage disposal rather than reuse of the drums.

We recommend that the regulations include language which authorizes the continuation of the current DHS policies."

Response to comment: The Department is partially accommodating this comment. The commentor first suggested that the Department's policy vis-a-vis returning unused drums to the original supplier be recognized in the regulations. That policy is actually a Department interpretation which applies Health and Safety Code Section 25143.2(b)(2) to the specific situation stated in (a) above. This section reads:

> "(b) Except as otherwise provided in subdivision (e), any recyclable material is not a hazardous waste under this chapter when the material can be shown to be recycled by any of the following methods:"
>
> "(2) Used or reused as a safe and effective substitute for commercial products, if the material is not being reclaimed."

The Department is incorporating this interpretation into the proposed regulations as Section 66261.7 .

Secondly, the commentor stated that the policy of allowing the shipment of triple rinsed drums without regulation should be recognized in the proposed regulations. This policy was not adopted pursuant to the Administrative Procedures Act and is not existing State law. In response to the large number of comments addressing the difficulty of classifying emptied containers by application of the Chapter 11 waste classification process, the Department is including proposed Section 66261.7 to define more clearly when emptied containers are regulated as hazardous waste. For a provision by provision explanation of that section, see that portion of the statement of reasons which address Section 66261.7.

Comment J3 - Sections 66265.90(a), 66265.91(b), 66265.98(k)(1) - (k)(3), and 66265.99(e)(3)

Commentor J - Southern California Gas Corp

Comment: "As proposed, the regulations require interim status facilities to conform with the requirements of permitted facilities with no allowances for grandfathering of existing agreements. This will have the affect of placing all interim status facilities in potential non-compliance. Existing systems will have to be upgraded to meet the new standards and new facilities will have to be installed at inactive sites.

SoCalGas recommends that all interim status facilities in existence at the time of the adoption of these regulations be grandfathered to allow for existing systems to remain operable as they are. This would allow for current ground water monitoring to continue pending the issuance of Part B permits. Additionally, we recommend DHS confirm that under the proposed regulations, facilities which are not managing hazardous waste on the effective date of the regulations will not be required to initiate monitoring activities at inactive sites that received hazardous waste prior to the effective date of the RCRA regulations (November 19, 1980)."

Comment response: In response to this and other comments, a schedule of compliance has been added to allow 180 days after the effective date of the proposed regulations for the submittal of proposed monitoring programs that will satisfy the new requirements. Since the proposed regulations are expected to replace the existing federal requirements enforced by the Department and EPA, and since the proposed regulations parallel regulations being proposed by the State Water Quality Control Board, a monitoring and response program designed to satisfy the proposed regulations should satisfy the requirements of all three agencies.

Additionally, section 66265.90 has been modified to make the applicability of these regulations discretionary for units that have not received hazardous waste since November 19, 1980. The Department maintains the authority to require monitoring and response programs for such units when necessary to protect human health or the environment.

Comment: J4 - Section 66261.3(e)

Commentor J - Southern California Gas

Comment: "Under the proposed regulations, it is unclear whether excavated soils containing only characteristically hazardous waste may be classified as hazardous or nonhazardous in the same manner as other wastes. This could impede the cleanup of routine spills and leaks of hazardous materials and subsequent efficient management of spill residues.

SoCalGas recommends that language in the regulations expressly allow for the characterization of soil that is contaminated with non-listed waste to follow procedures set forth in Article 3 of the proposed regulations for process wastes."

Response to comment: The Department agrees that contaminated soils, and any other wastes, which are not listed in Article 4 of proposed Chapter 11, are hazardous wastes only if they exhibit a characteristic of a hazardous waste. The Department is removing proposed Section 66261.3(e), (e)(1), and (e)(2) in favor of the "mixture rules" found in other subsections of Section 66261.3. For a discussion of this topic, see the response to comment I3.

The Department is not including express language addressing classification of contaminated soils because these materials are merely wastes and are thus subject to the same waste classification procedures as any other waste. Elimination of the proposed mixture rule of proposed Section 66261.3(e) will eliminate the difficulties and delays the commentor discussed in routine cleanups and spills and allow objective classification of the spill residues.

Comment J5 - Section 66262.34

Commentor J - Southern California Gas Corporation

Comment summary, 5.1: The commentor states that the proposed regulations pertaining to this section, which set forth the on-site transfer and treatment of hazardous wastes, do not recognize the federal exception for treatment in tanks by generators who accumulate waste on-site for less than 90 days.

Comment response to 5.1: The proposed regulations do not recognize the federal exemption. Major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking.

Comment summary, J5.2: The commentor states that this section could be interpreted to require permits for on-site transfers of waste by the generator.

Comment response, J5.2: This section sets forth in subsection (a) that except as provided in subsection (d) of the section a generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status, provided they follow the criteria set forth in the section. Nothing in section 66262.34 precludes a generator from transferring waste on-site.

Comment summary, J5.3: The commentor states that EPA's regulations interpretation of the corresponding 40 CFR section 262.34 is based on the fact that certain treatment processes carried out during the

accumulation period can render the waste less hazardous or make it easier or less dangerous to transport.

Comment response, J5.3: See response to comment 5-1, above.

Comment summary, J5.4: The commentor suggests that language be included in the proposed regulations that permits the treatment of wastes in accumulation tanks without interim status or a permit so long as the generator complies with all other applicable laws and regulations.

Comment response, J5.4: See response to comment 5-1, above.

Comment J6

Commentor - Southern California Gas

Comment J6: This section requires that a generator submit a health risk assessment as part of the information included in a Part B application. SoCalGas agrees in concept with the need to evaluate the effects of these facilities on human health and the environment, but we have several concerns with this requirement.

The science of assessing human health risks is still developing and there currently exist widely differing opinions among the "experts" in the field on which models and approaches are appropriate when assessing a given risk. Numerous models, guidelines and methodologies exist for performing risk assessments all of which can potentially yield very different results. Therefore, when assessing a risk, the generator is forced to choose conservative, worst-case scenarios to develop the exposure model. The results of these kinds of analyses are not realistic and do not provide the generator, the DHS or the public with any meaningful information.

SoCalGas strongly suggests that DHS delete this requirement until such time as a detailed set of criteria is developed that can be used to perform the required risk assessments. This will ensure that all members of the regulated community are subject to the same requirements.

Comment response: See response to comment T21.

Comment J7 - Section - 66260.10 (b), Identification Number Definition

Commentor J - Southern California Gas Company

Comment summary: The commentor states that the proposed regulations would require generators of non-RCRA hazardous waste to obtain a State Identification number.

The commentor also states that generators handling both RCRA and non-RCRA hazardous waste would need to obtain two numbers. This would cause many generators to use two separate numbering systems to manage their wastes. The commentor recommends that the Department adopt one numbering system for use with all wastes handled in California and regulated by the Department.

Comment response: The use of a dual numbering system is required by California's two-tiered hazardous waste universe. RCRA and non-RCRA (California-only) hazardous wastes must be tracked separately,therefore, both EPA and the Department issue Identification numbers. A generator in this state must obtain one number either from EPA or the Department.

Comment J8.1 Section 66261, Appendix X

Commentor - Southern California Gas Co.

Comment summary: The commentor states that current California law allows generators to determine whether their wastes are hazardous without the need for Department involvement. The proposed regulations as drafted appear to restrict self-certification by imposing presumptions of hazardousness for wastes containing chemicals listed in Appendix X. The commentor requests that the Department eliminate the presumption of hazardousness.

Comment response: See response to Comment F-4.2 Section 66261, Appendix X.

Comment J8.2 Section 66261.3 (a)(2)(C)
(includes comment addressed to Section 66262.11 (b)

Commentor - Southern California Gas Co.

Comment summary: The commentor believes that the proposed regulation would require industry to seek Department concurrence for nonhazardous waste determinations for all wastes containing any of the chemicals in Appendix X. Until the determination was made, the waste would have to be managed as hazardous even if it contained only minute quantities of listed chemicals. This could significantly increase the cost of managing wastes which the generator could easily self-certify as nonhazardous. It would also increase the Department's administrative burden and the burden on hazardous waste management facilities. The commentor strongly recommends that language in the proposed regulations be revised to require "determinations" by the generator instead of "demonstrations" to the Department and clarify that generators do not have to seek Department concurrence on determinations.

Comment response: See response to Comment D-6 Section 66261.3 (a)(2)(C) (includes comment addressed to Section 66262.11 (b)).

Comment: K1 - Chapter 11

Commentor K - General Dynamics

Comment: "Empty Drum Management - The proposed regulations do not address the management of empty drums that are recycled or returned to the original manufacturer. For the past 9 years, the approved practice by the Department of Health Services has allowed generators to ship empty drums, containing less than 1 inch of material, to a State approved drum recycler or to the original manufacturer. The proposed regulations should continue to allow this practice. The reuse of drums is more beneficial from an economic and environmental aspect than disposing of them in the limited hazardous waste landfill space that is available today."

Response to comment: In response to this and other comments concerning empty drum regulations, the Department is incorporating contaminated container regulations in the proposed regulations. These regulations will allow exempt shipment of used drums to the original manufacturer for refill and delineate proper management of other contaminated containers. See the portion of the statement of reasons which addresses Section 66261.7 for a provision by provision explanation of this regulation.

The proposed empty container regulations would encourage shipment of contaminated drums to drum recyclers by requiring that these drums otherwise be disposed of as hazardous waste. The Department has always encouraged beneficial reuse or reclamation of drums and continues to encourage this practice in the proposed regulations by inclusion of the provisions of proposed Section 66261.7(c)(2) and (c)(3), (d)(2) and (d)(3), and (f). Section 66261.7(f) requires that contaminated drums be regulated as hazardous waste meaning that recycle is the preferable alternative to expensive treatment (to meet treatment standards required for all hazardous wastes by May 8, 1990 pursuant to Health and Safety Code Section 25179 et seq) or disposal in a class I landfill. Drums are also declared to be a "recyclable hazardous waste type" in proposed Section 66266.2 subject to specified actions pursuant to Section 66266.1 if these drums are not recycled. Shipment of contaminated drums to the original manufacturer would be doubly encouraged by inclusion of the statement in Section 66261.7(c)(3) allowing certain containers to be returned to the original manufacturer for refilling. The Department is indeed committed to recycle or cleaning of emptied containers to avoid using limited hazardous waste landfill space for recyclable containers.

Comment K2

Commentor K - General Dynamics

Comment: General Waste Reduction - The proposed regulations do not allow a generator to perform elementary neutralization or accomplish wastewater treatment that discharges to a POTW. The

federal RCRA exempts these processes from permitting. The proposed regulations should also exempt these processes since it is incumbent on generators to reduce their waste in conformance with both federal and state policies.

Comment response - See response to comment T34

Comment L1

Commentor L - Stetson Engineers for: San Gabriel Valley Watershed

Comment: "The Judgement in the Main San Gabriel Basin Adjudication directs the Watermaster to be concerned regarding water quality and to take reasonable steps 'to assist and encourage appropriate regulatory agencies to enforce reasonable water quality regulations affecting the Basin, including regulation of solid and liquid waste disposal.'

The proposed Amendment of Article 5 (Water Quality Monitoring For Classified Waste Management Units), commencing with Section 2550 of Subchapter 15 of Chapter 3 of Title 23 of the California Code of Regulations appears to include provisions to allow the regulatory agencies to reduce the current level of monitoring for landfills and to reduce the level of cleanup at landfills where leakage has been detected.

Under the authority of the water quality control provisions of Porter-Cologne, existing Article 5 sets forth water quality monitoring regulations which are intended to protect the quality of the waters of the State from <u>degradation</u> as a result of discharges of waste to land. This means water quality monitoring regulations should be promulgated and enforced that the quality of the State's waters <u>is not degraded</u>."

Comment response: The Department does not agree that the proposed regulations will "reduce the level of monitoring at landfills...". The proposed regulations include a new requirement to identify and monitor for constituents of concern. This is intended to provide field verification that the assumptions made in the selection of monitoring parameters are valid. Monitoring for the list of monitoring parameters must be performed at a frequency that is based upon the ground water flow rate and the physical conditions at the site. The Department believes that the new requirements will result in more effective monitoring.

The requirements for concentration limits greater than background have been added to provide guidance for the permit writer to evaluate cleanup strategies when the attainment of background concentrations is not feasible. The Department does not agree that the proposed regulations will reduce the level of cleanup at landfills. The requirements in Section 66264.94 specifically require that concentration limits must be protective

of human health and the environment and that the limit must be the lowest limit that is technologically or economically feasible.

Comment L2

Commentor L - Stetson Engineers for: San Gabriel Valley Watermaster

Comment: "Under existing Article 5, if evidence of leakage is detected, monitoring is then required for all appropriate indicator parameters and all waste constituents which are reasonably expected to be in or derived from waste discharged into the unit. (These constituents are now being called the "constituents of concern.") The proposed regulations allow the discharger to continue to monitor for a relatively small number of waste constituents and indicator parameters (these are now being called "monitoring parameters") that will provide a "high degree of certainty" that the data needs of each monitoring and response program will be met subsequent to existing evidence of leaking landfill.

We are concerned with this proposed change in the regulations. When it has been determined that a waste management unit is leaking, the integrity of the entire unit is in question. By only monitoring regularly for certain parameters rather than the "constituents of concern," are you not subjecting the waters of the State increased risk of contamination? Monitoring the "constituents of concern" at five-year intervals does not appear adequate for a leaking landfill."

Comment Response: This comment expressed concern that monitoring for constituents of concern at five-year intervals is not adequate for a landfill that is known to be leaking. The Department does not believe that it is possible to select a monitoring frequency that will be universally appropriate throughout California. The proposed regulations contain a new approach to monitoring that will allow the permit writer to design an efficient monitoring system that is appropriate for site conditions and is protective of human health and the environment. Under the proposed regulations, when specifying the frequency for monitoring for constituents of concern, the permit writer must consider the degree of certainty associated with the demonstrated correlation between values for monitoring parameters and values for the constituents of concern. Whenever the permit writer believes that more data is needed, it will be required. (Note: The list of monitoring parameters for an evaluation monitoring program must include all hazardous constituents that have been detected in groundwater.)

Comment L3

Commentor L - Stetson Engineers for: San Gabriel Valley Watermaster

Comment: "Under proposed Article 5, corrective action cleanup levels which are greater than background water quality values may be established for a Corrective Action Program because cleanup to background levels may not be reasonable in all cases. The new provision allows the Regional Boards to consider the economics of cleanup actions, while still maintaining water quality at levels which maintain existing and potential beneficial uses of waters of the State and are protective of human health and the environment. We are concerned about this proposed modification to Article 5. Economics should play a very small role in the effective cleanup of ground water contamination caused by leaking landfills. A landfill that cannot afford to clean up its contamination should not be allowed to continue operating.

In short, this provision would allow a contaminator to plead economic infeasibility as long as the contaminated water remains at levels for beneficial uses. Under this scenario a contaminator can avoid cleanup due to economic infeasibility, while subsequent contaminators that might marginally cause the water quality to exceed the levels for beneficial use and will be required to cleanup its contamination regardless of economic feasibility.

This provision appears to set up a framework that can allow the good quality waters of the State to degrade to levels established as acceptable for beneficial uses. It is the State Board's responsibility to protect the water of the State from <u>any</u> degradation. The <u>minimum</u> cleanup requirements should be to background levels."

Comment Response: The provisions of Section 66264.94 have been rewritten to clarify the intended requirement that an owner or operator must always achieve background values unless it is technically or economically infeasible to do so. This is an <u>additional</u> requirement that must be met before a concentration limit greater than background may be established. Although the Department agrees that the goal of the hazardous waste management program is to prevent and/or remediate any degradation of the waters of the state, the Department must recognize that it may not always be possible to achieve that goal. In those instances where it is technologically or economically infeasible to attain background levels, the Department may establish a concentration limit greater than background only if all of the requirements of Section 66264.94 have been met.

Comment L4

Commentor L - Stetson Engineers for: San Gabriel Valley Watermaster

Comment: "Subsection 2550.7(d)(5) of the proposed regulations indicates the Regional Board may omit the requirements to monitor the unsaturated zone at a waste unit. The unsaturated zone at a landfill is a percipient indicator of potential landfill leakage and ground water contamination. Monitoring of the unsaturated zone will allow early detection of leakage and remedial action to avoid ground water contamination. This monitoring may also reduce the overall cleanup cost to the landfill operator by early detection. The Watermaster supports monitoring of the unsaturated zone."

Comment Response: The Department agrees that monitoring of the unsaturated zone is necessary to provide early detection of a release from a regulated unit. For this reason, unsaturated zone monitoring is required for all new regulated units unless site conditions preclude the use of an effective system. For existing units, unsaturated monitoring is required unless installation of unsaturated zone monitoring equipment is not feasible.

Comment M1 - section 66260.10 definition of "free liquids"

Commentor - Southern California Edison Co.

Comment summary: The commentor is concerned that the definition of "free liquids" does not reference the paint filter test as a method for determining the presence of free liquids in a waste material. The commentor believes that the paint filter test should remain in the Title 22 regulations.

Comment response: See response to Comment D15.

Comment: M2 - Section 66260.10

Commentor M - Southern California Edison Co.

Comment: "Halogenated Organic Compounds" The definition refers to Appendix III of Chapter 10. No such Appendix exists.

Response to comment: The Department is accommodating this comment. The reference to "appendix III of this chapter" in the definition of "Halogenated Organic Compound" found in Section 66260.10 is being replaced by a reference to "appendix III to chapter 18", the correct reference.

Comment: M3 - 66260.10

Commentor M - Southern California Edison Co.

Synopsis of comment: "Owner or Operator" The proposed definition expands the applicability of the RCRA regulations to owners and operators of non-RCRA hazardous waste facilities. By definition, non-RCRA facilities are not subject to the regulations. This language should be returned to the existing definition.

Response to comment: The Department cannot accommodate this comment. This definition states that an owner or operator is the person subject to the rules of the Division. These rules apply to all persons managing hazardous waste in the State of California whether they are managing RCRA hazardous waste or non-RCRA hazardous waste. The Department is adopting only one consistent hazardous waste program which incorporates the more stringent requirement from either State or federal law and, in most cases, applies it to all hazardous waste facilities. This definition does not set the applicability of those provisions; it merely defines the term "owner or operator"; the applicability of each set of requirements is determined by the introductory section to each chapter or article.

Comment M4 Section 66260.10

Commentor - Southern California Edison

Comment summary: ""Persistent Toxic Substance" Persistence is used as criteria for listing toxic constituents but is not defined in the proposed regulations. Edison would like to reserve comment until a definition is provided."

Comment response: A definition for persistence is not necessary. The Department is not incorporating the federal listing criteria because the Department is adopting the federal lists verbatim as a requirement of authorization. The only criterion used by the Department to list wastes is that the wastes be listed in 40 CFR Part 261 as hazardous waste. The term "Persistent Toxic Substance" is defined in title 22, Cal. Code Regs., section 66260.10 as a toxic substance that resists natural degradation or detoxification. The definition was incorporated verbatim from the current definition provided in title 22, Cal. Code Regs., section 66156.

Comment M5 - Section 66261.3(a)(2)(E)4.

Commentor M - Southern California Edison

Comment: ""De Minimis Quantity" The proposed regulation provides that mixed, listed RCRA wastes are hazardous wastes. This disallows the existing exemption for "De minimis quantities" of

hazardous waste and is inconsistent with federal law. Provision should be made to become consistent with federal law by allowing exemption of "De minimis quantities" of hazardous waste."

Response to comment: The Department is partially accommodating this comment. The Department feels that the commentor is stating that the proposed "mixture rule" of Section 66261.3(e) declares that any mixture of a hazardous waste and any other material is a hazardous waste regardless of the characteristics of the mixture. The commentor feels that this provision negates the exclusion for "de minimis quantities" of hazardous waste found in the proposed regulations in Section 66261.3(a)(2)(E)4. This interpretation of the effect of proposed Section 66261.3(e) is correct. The Department is deleting Section 66261.3(e) from this package. Please see the response to comment I3 for further discussion of this change. The de minimis rule of Section 66261.3(a)(2)(E)4. is, however, conditioned by the application of the characteristics of a hazardous waste and the lists of hazardous wastes by the following phrase in Section 66261.3(a)(2)(E):

> "...(except by application of subsections (a)(2)(A) or (a)(2)(B) of this section)..."

Thus, elimination of the incorrect mixture rule proposed in Section 66261.3(e) allows the de minimis provisions (and the other provisions under section 66261.3(a)(2)(E) to operate in a manner consistent with the federal regulations and with current State law.

Comment M6 - Section 66261.2(f)

Commentor M - Southern California Edison

Comment: "Also, section 66261.3(f) regulates highly dilute waste streams which contain small quantities of hazardous waste, even though the resulting mixture does not exhibit any hazardous characteristics. This would adversely effect source reduction activities currently in use by Edison. As the result of water treatment processes we generate high and low pH waste waters which are then commingled to produce a nonhazardous mixture. Under the new rule, this discharge would be hazardous, by definition, even though the resulting mixture exhibits no hazardous characteristics. It would be more appropriate to base a hazardous waste determination on the characteristics of the discharge than on the constituents which comprise it."

Response to comment: The Department has examined its rules governing mixtures of hazardous waste with other substances. The Department agrees that this mixture rule, as proposed, would adversely affect source reduction and other facets of hazardous waste management. The Department is altering the "mixture rules" in the package by reverting to our understanding of the status of existing law. Several of these characteristics are, indeed, based

on exhibiting a characteristic of a hazardous waste. For further discussion of "mixture rules" see the response to comment I3.

Comment M7 - Section 66261.2(d)(1) and (d)(2)

Commentor M - Southern California Edison

Comment: ""Recycled Commercial Chemical Products" Proposed Sections 66261.2(d)(1) and 66261.2(d)(2) do not recognize existing federal exemptions (40 CFR sections 261.2(c)(1)(ii) and 261.2(c)(2)(ii) to the classification of recycled chemical products as hazardous waste. The proposed regulations base the non-RCRA hazardous waste classification on the fact that the wastes are applied to the land or used as fuel and "this is their ordinary manner of use." If the chemicals are used in "their ordinary manner", they should not be considered waste at all -- let alone non-RCRA hazardous waste. The subject commercial chemical products should be exempted from the definition of hazardous waste under section 66262.2(d). "

Response to comment: The Department is partially accommodating this comment. The convoluted statutory provisions addressing recycling of materials which are or otherwise would be hazardous waste have been examined and a change made to the proposed regulations. Commercial chemical products which meet the definition of "retrograde material" (Health and Safety Code Section 25121.5) are not regulated as hazardous waste until they meet the criteria of Health and Safety Code Section 25120.5(e) to become "recyclable materials". Thus, a note has been added to Section 66261.2(d)(1)(B) stating that these materials are not wastes until they meet the definition of recyclable material if they are retrograde materials.

However, the Department cannot adopt the federal exemption for commercial products applied to land which are normally applied to land wholesale. Health and Safety Code Section 25143.2(e)(1) states that a waste which is applied to land (used in a manner constituting disposal) is not eligible for any of the exemptions from regulation for recycled hazardous wastes. Because these regulations cannot contradict State statutes, this comment cannot be completely accommodated.

Comment M8 - section 66265.280 (a) (1,2,3)

Commentor - Southern California Edison Co.

Comment summary: "Proposed section 66265.280 requires the "prevention" of migration or release of hazardous constituents to surface or ground water as well as to the air. Existing 40 CFR section 265.280 requires only "control" of such releases. There is no basis in the statement of reasons for the more restrictive

language. The differences in the operative words is significant and would make compliance difficult, if not impossible. The use of the word "prevention" should be retained."

Comment response: The Department believes that the commentor has inadvertently said the use of the word "prevention" should be retained instead of "removed", as the bulk of the comment leads us to believe that the commentor objects to use of the word "prevention". This comment cannot be accommodated because the word "prevention" is currently used in the regulatory language contained in Title 22, CCR section 67378. The Statement of Reasons clearly explains that this more restrictive state language has been inserted in order to maintain the stringency of the state regulations.

Comment: M9 - Section 66260.10

Commentor M - Southern California Edison Co.

Comment: "The proposed definition of "non-RCRA hazardous waste" will greatly expand the universe of non-RCRA hazardous wastes. Current section 25117.9 allows generators to "self-determine" that a waste is non-RCRA based on detailed criteria. The proposed regulations, rather than allowing "self-determination," requires generators to "demonstrate" to the DHS that a waste is non-RCRA. This clearly exceeds the status quo but does not detail what is required to "demonstrate" the characteristics of a waste."

Response to comment: The Department is accommodating this comment. The regulatory definition of "non-RCRA hazardous waste" is being changed to conform to the statutory definition. The Department affirms the "self-determining" aspect of the waste classification regulations as discussed in the response to comment M11. Persons categorizing hazardous wastes will not need to demonstrate to the Department that their categorization is correct.

Comment: M9.1 - Chapter 11

Commentor M - Southern California Edison

Comment: "<u>Classification of "Hazardous waste"</u> The proposed regulations change the definitions of extremely hazardous waste, acutely hazardous waste, RCRA hazardous waste, non-RCRA hazardous waste, and special waste. The regulations direct the reader to examine the separate definitions of each of the wastes and determine if the waste under consideration is hazardous."

Response to comment: The commentor's understanding of the proposed regulations is in error. The status of the definitions cited above is as follows:

Extremely hazardous waste: This definition is identical to the existing statutory definition, Health and Safety Code section 25115.

Acutely hazardous waste: Acutely hazardous waste is defined in Health and Safety Code section 25110.02 as:

> "...any hazardous waste classified as an acutely hazardous waste in regulations adopted by the Department"

It is defined in regulation (Section 66260.10, CCR) as:

> "...any hazardous waste classified as an acutely hazardous waste in Article 4 of Chapter 11 of this division."

This category of hazardous waste is then identified by a letter designation in the lists of hazardous wastes. These designations are identical to the acutely hazardous waste designations in 40 CFR Part 261, Subpart D (lists of hazardous wastes). Thus, any material currently regulated as an acutely hazardous waste under federal law is an acutely hazardous waste under the proposed regulations. Because existing State law adopts these federal lists of hazardous wastes by reference in Section 66696(a)(7)(A) through (a)(7)(D) CCR, all wastes which will be identified as acutely hazardous wastes under the proposed regulations are identified as an acutely hazardous waste under the existing State regulations. The only difference in the categorization of waste as an acutely hazardous waste is that the Department has improved the clarity of the definition by including the full text of the lists of hazardous wastes (Article 4 of proposed Chapter 11).

Non-RCRA hazardous waste: The proposed definition is nearly identical to the existing statutory definition found in Health and Safety Code section 25117.9. There is, however, a major difference in the effect caused by the substitution of the word "demonstrate" for the word "determine" used in the statute. This substitution has been the subject of a number of comments and is being altered to affirm the self-certifying nature or existing State and federal law. See response to comment M11 for further discussion of self-certification.

RCRA hazardous waste: This is a new definition added to the regulations. It is the "inverse" of non-RCRA hazardous waste. This definition is being altered to conform to the statutory definition of "RCRA hazardous waste" found in Health and Safety Code Section 25120.2.

Special waste: The proposed definition is identical to the definition found in existing Section 66195 CCR except for the renumbering of the sections referred to in this definition. Because these sections have not changed in their substantive requirements (see Statement of Reasons for Sections 66261.120,

66261.122, 66261.124, and 66261.126), there will be no change in the effect of any of these provisions.

The regulations do not direct the reader to examine his waste in light of the above definitions to determine if it is hazardous. The reader is first directed to Section 66261.2 to determine if his material is a waste. If the material is a waste, the reader then applies the definition of a hazardous waste as presented in Section 66261.3 to classify the waste as hazardous or nonhazardous. The reader is then expected to categorize his waste as one of the above types of hazardous waste.

Comment M10 Section 66261, Appendix X

Commentor - Southern California Edison Co.

Comment summary: "Proposed sections 66261.3 (a)(2)(C) and 66262.11 (b) classify as hazardous, wastes listed in Chapter 11, Appendix X. The introduction to Appendix X "presume(s)" that a waste has hazardous properties. Existing language, however, refers only to the "potential" hazardous properties of a waste prior to its classification. The Department has indicated that section 66471 of Title 22 provides the foundation for the change in the waste classification procedure found in the new regulations. It is very likely that the DHS will be inundated with requests for waste classification should the proposed regulations be adopted as drafted." The commentor requests that the introductory language in Appendix X be returned to read "potential" hazardous properties to serve as a guide for the self-certification process.

Comment response: See response to Comment F4.2 Section 66261, Appendix X.

Comment M11 - Section 66260.10, Chapter 11

Commentor M - Southern California Edison Co.

Comment: (In previous comments the commentor is discussing several of the proposed provisions which require demonstrations to the Department) "In essence, the proposed rule makes all wastes hazardous until it is "demonstrate(d)" to the DHS that they are not. Legally, no one could begin to manage a waste properly until the DHS classified the waste. This could have the effect of requiring the storage or slowing the treatment and recycling of waste which may not even fall under the proposed regulations. The proposed regulations should be modified to retain the current "self- certification" process and the introductory language in Appendix X should be returned to read "potential" hazardous properties to serve as a guide for the self-certification process."

Response to comment: The Department is accommodating this comment. The Department agrees that classification of hazardous waste is a self-certifying process. Both existing State and federal law allow self-certification of hazardous wastes. Existing State regulations in Section 66305 tell the producer of the waste to classify that waste and specifically offer the option to obtain Departmental concurrence with that classification decision. The federal regulations in 40 CFR Section 262.11 require the generator of a solid waste to determine if that solid waste is a hazardous waste. The federal regulations then offer no explicit mechanism for obtaining EPA concurrence with a waste classification decision. The delay in classification due to obtaining Departmental concurrence would greatly exacerbate problems with storage and timely recycling and treatment. The provisions objected to in comments M9, M10 and this comment are being changed to allow self-certification of wastes.

Comment M12 Section 66261.24 (a)

Commentor - Southern California Edison Co.

Comment summary: "Section 66261.24 (a) of the proposed regulations directs that the California Waste Extraction Test (WET) be used to identify wastes that exhibit the characteristic of Extraction Procedure (EP) toxicity (or California toxicity). The rationale provided in the Statement of Reasons for selection of the State treatment procedure is that the WET is more stringent than the EP Toxicity test and the WET would have to be performed anyway to determine whether a waste that passed the federal EP toxicity test also exhibited California toxicity.

Edison is concerned about the regulatory consequences of the failing to adopt the federal Toxicity Characteristic Leaching Procedure (TCLP). Because the TCLP is likely to be judged by the EPA to be more stringent and is also likely to be adopted prior to the projected effective date of the proposed regulations, it will have to be incorporated into the proposed regulations in order for California to receive final authorization under RCRA.

Edison recommends that the DHS modify the proposed regulations to direct the use of the TCLP for RCRA wastes."

Comment response: See response to Comment J-1 Section 66261.24 (a) (includes comment addressed to Section 66261.101).

Comment: M13 - Section 66261.3

Commentor M - Southern California Edison

Comment: "The proposed regulations provide that mixtures of RCRA wastes, solely because they exhibit one or more hazardous waste characteristics, are hazardous waste. This contradicts federal law and should be removed from the proposed regulations."

This comment is unclear. The Department sees two possible interpretations of this comment and will answer each separately.

Interpretation 1: The commentor is stating that mixtures of RCRA hazardous waste where the mixture exhibits the characteristics of a hazardous waste should not be hazardous waste because this contradicts federal law.

Response to comment (interpretation 1): The existing law, both State and federal, classifies any material classified as a waste pursuant to Health and Safety Code section 25124 (State law) or classified as a solid waste (subject to exclusions) pursuant to 40 CFR Section 261.2 (federal law) as a hazardous waste pursuant to Section 66696 (State law) or 40 CFR Section 261.3(a)(2)(i) (federal law) if they exhibit a characteristic of a hazardous waste. Proposed Section 66261.3(a)(2)(a) duplicates the effect of the above mentioned provisions. Thus, the proposed mixture rules are correct as they stand.

Interpretation 2: The commentor is stating that mixtures of a RCRA hazardous waste which exhibits one or more of the characteristics of a hazardous waste and other material should not be hazardous waste because this contradicts federal law.

Response to comment (interpretation 2): The commentor is incorrectly interpreting the proposed regulations. The mixture rules are found in section 66261.3 and are as follows:

Section 66261.3(a)(2)(D) addresses mixtures of listed RCRA hazardous wastes listed with hazard codes other than (T) or (H) with other materials. These mixtures are declared to be nonhazardous if they do not exhibit a characteristic of a hazardous waste.

Section 66261.3(a)(2)(E) addresses mixtures of listed RCRA hazardous wastes which have not been delisted pursuant to 40 CFR Sections 260.20 and 260.22. It states that, with stated exceptions, these mixtures are hazardous waste. This is consistent with federal law.

Section 66261.3(b)(3) addresses hazardous wastes, including mixtures of hazardous wastes, stating that materials in that category become hazardous wastes when they first exhibit a characteristic of a hazardous waste. This provision is consistent with federal law.

Section 66261.3(e) is being deleted from the regulation package. Analysis of existing law demonstrates that this section as proposed was incorrect and, if corrected, unnecessary. For further discussion of this issue, see the response to comment I3.

Comment M14

Commentor - Southern California Edison

Comment summary: Given the impending adoption of the TCLP, it is likely that the universe of hazardous waste will be greatly expanded. Using the TCLP, it is unclear whether wastes which would have been classified as hazardous at the time of disposal but have been subject to natural biodegradation would be classified as hazardous now. There is no mention of this issue in the Statement of Reasons. Clarification of this issue would help in the classification of wastes at inactive sites."

Comment response: The Department cannot respond to this comment because the Department has not evaluated the Toxicity Characteristic Leaching Procedure yet. A response to the incorporation of the Toxicity Characteristic Leaching Procedure into State regulation has been addressed in response to Comment J-1 Section 66261.24 (a) (includes comment addressed to Section 66261.101). No change was proposed; therefore, no change in regulation was made.

Comment M15 - Section 66264.90 (b)

Commentor M - Southern California Edison Co.

Comment summary: Section 66264.90 (b) appears to indicate that it may not be possible to close a facility if ground water contamination exists. Commentor has also expressed his concern about the addition of the words "ground water" in this section

Comment response: Department does not concur with the Commentor's interpretation of above referenced section. This section states that water quality monitoring and response program requirements as established in proposed Article 6 of Chapter 14 do not apply to a facility after closure if the facility has been clean closed. In response to your concern about the words "ground water", these words have been added because existing California regulations require that all contaminated materials be removed from any unit in order to obtain clean closure. However, if a facility cannot undergo "clean closure" due to ground water contamination, facility can go through "closure in place" and comply with post-closure care requirements pursuant to Article 7 of proposed Chapter 14. Therefore, the change suggested by the commentor was not accommodated.

Comments N1 and AL1 - Sections 66261.4 and 66261.24

Commentor - N - Nancy Hayes
AL - Morrison and Foerster for
National Electrical Manufacturers Association

Comment summary: The commentors are asking for relief from the requirement to classify and manage fluorescent and High Intensity Discharge lamps as hazardous. Fluorescent and High Intensity Discharge lamps generally exceed only the Total Threshold Limit Concentration value for mercury. Exceeding of the Total Threshold Limit Concentration alone is not indicative of the actual hazard posed by a substance because the Total Threshold Limit Concentration provides no indication of the real accessibility of the substance to the relevant exposure pathways. A more accurate indication of the actual hazard potential of these items is provided by the federal and State tests designed to assess leaching potential. Fluorescent and High Intensity Discharge lamps pass both the federal and State leaching tests. The commentors believe this relief is necessary because there have been studies undertaken, but to date no commercially viable way to recycle the mercury in the lamps has been found to avoid landfilling. It is also impossible to eliminate or reduce the mercury and it would not be an environmentally desirable result to eliminate the lamps because they are the most energy efficient means of producing light. The commentors state that given the fact that these lamps do not pose a hazard that the requirement to classify the lamps as such consumes tremendous quantities of landfill space that could be used more beneficially for those wastes that are actually hazardous. Requiring disposal as a hazardous waste also adds disproportionately to the cost of using fluorescent and High Intensity Discharge lamps. Such a disproportionate increase in the overall cost of using fluorescent and High Intensity Discharge lamps can itself have adverse environmental consequences because it will tend to discourage the use of such lamps. Fluorescent and High Intensity Discharge lamps are more energy-efficient and hence will reduce mercury emissions to the environment more than incandescent lights. The commentors suggested two changes to the regulations. One change would be to indicate in title 22, Cal. Code Regs., section 66261.4 (b) that fluorescent and High Intensity Discharge lamps are excluded from wastes that are defined as hazardous. Another change would be to indicate in the table of Total Threshold Limit Concentration values that the mercury level for Total Threshold Limit Concentration does not apply to fluorescent and High Intensity Discharge lamps.

Comment response: To conform with the current level of stringency in State law, an exclusion from regulation that fluorescent lamps are not hazardous wastes pursuant to title 22, Cal. Code Regs., section 66261.4 (b) or that the Total Threshold Limit Concentration value for mercury does not apply to fluorescent lamps cannot be incorporated. Such exclusions are not within the scope of this rulemaking package. The Department has been working with the commentors for some time to arrive at an appropriate resolution to the relief the commentors are seeking. The issue is quite complex and requires extensive evaluation. The Department can take the commentors comments under consideration for separate evaluation; however, not as a part of this authorization rulemaking package. The modification is rejected.

Comment N2 - Section 66260.10

Commentor N - Morrison and Foerster for:
National Electrical Manufacturers Association

Comment: Proposed section 66260.10 provides that a waste is presumed to be regulated under the Resource Conservation and Recovery Act ("RCRA"), "unless it is demonstrated to the Department that the hazardous waste is a non-RCRA hazardous waste." This provision could be interpreted to require a formal demonstration to, and approval by, DHS, as opposed to a determination made by the waste generator pursuant to the regulations. Thus, to avoid the presumption that fluorescent and HID lamps are regulated under RCRA -- which they are not -- the proposed rule might require formal demonstrations to DHS, rather than determinations by waste lamp generators that these lamps are not RCRA hazardous. Such an interpretation would be inconsistent with 40 C.F.R. section 262.11, Health and Safety Code section 25117.9 and proposed sections 66260.200(c) and 66261.100(B) which all contemplate that hazardous waste determinations are to be made by the waste generator. It could also create and administrative nightmare for DHS, which would have to review such demonstrations. Therefore, we recommend that proposed section 66260.10 be revised to clarify that the exception to the presumption of RCRA hazardousness is available where the waste generator determines pursuant to the regulations the hazardous waste is a non-RCRA hazardous waste."

Response to comment: The Department agrees with all the points raised by the commentor and is accommodating this comment. For further discussion of the self determining nature of the hazardous waste regulations, see the response to comment M11.

Comment: N3 - 66260.200(a)

Commentor N - Morrison and Foerster for:
National Electrical Manufacturers Association

Synopsis of comment: Proposed Section 66260.200 requires that wastes exhibiting a characteristic of a hazardous waste or listed as hazardous wastes must be classified as hazardous wastes. This requirement does not take into account the exemptions in Section 66261.4 and may mistakenly apply the criteria of Section 66261.10 which were never intended for generator waste classification. Amend Section 66260.200(a) to state that a waste must be classified as a hazardous waste if it meets the definition of a hazardous waste in 66261.3.

Response to comment: The Department is accommodating this comment. The change is being made as proposed.

Comment: N4 - Section 66261.1(b)(2)

Commentor N - Morrison and Foerster for:
National Electrical Manufacturers Association

Synopsis of comment: Section 66261.1(b)(2)(A) and (b)(2)(B) are unacceptably unclear because they allow the Department to classify materials as "waste" or "hazardous waste" because the Department believes that these materials meet the statutory definition of a hazardous waste (Health and Safety Code section 25117) without meeting the regulatory criteria for classification as a hazardous waste (proposed Section 66261.3).

The regulatory criteria for identifying hazardous wastes were adopted to clarify statutory definition and make it more specific. The regulatory definition presents objective criteria for making waste classification decisions while the statutory definition does not. They further state that the lack of objective criteria in the statutory definition makes the reference to it in this section unclear.

This authority to classify materials as hazardous waste based on the Department's belief goes beyond the Department's inspection and enforcement authority to take samples and carry out analyses of materials that the Department thinks might be hazardous. This provision goes beyond the provisions of the corresponding federal regulations, 40 CFR Section 261.1(b)(2)(i) and (b)(2)(ii):

> "This approach is also unnecessary to achieve the objectives of 40 C.F.R. section 261.1(b)(2). That section only allows classification of a waste as hazardous based on the general statutory definition in the RCRA statute, rather than the specific lists and characteristics identified in the RCRA regulations, under very limited circumstances -- namely when the Environmental Protection Agency exercises its inspection, monitoring and imminent hazardous response authorities under RCRA sections 3007, 3013, and 7003. This, the objectives behind adoption of proposed section 66261.1(b)(2) can be fully satisfied by limiting application of the general statutory definition of hazardous waste to those situations where DHS exercises comparable inspection, monitoring and imminent hazard authorities under the statutory counterparts in the hazardous waste control law. We recommend that proposed section 66261.1(b)(2) be revised accordingly."

Response to comment: The Department has analyzed the effect of the 40 CFR provision which served as the basis for this regulation. The Department agrees with the commentor quoted above that effect of the reference to the RCRA statutory definition of hazardous waste applies only to the inspection, monitoring, and imminent hazard authorities referred to in that 40 CFR section. The Department agrees that supplanting the waste classification procedure found in Section 66261.3 with the statutory definition defeats the entire purpose of that section, namely, to set forth objective criteria for the regulated community to make waste

classification decisions. The Department does, however, need authority parallel to the 40 CFR provision both for the purpose of satisfying the legislative mandate to gain authorization to run the State's program in lieu of the federal program and to gain the authority to sample materials that the Department believes may be hazardous waste.

The Department is changing Section 66261.1(b)(2) and eliminating Sections 66261.1(b)(2)(i), and (b)(2)(ii).

First, the Department agrees that Section 66261.1(b)(2)(B) exceeds the authority required to satisfy the legislative mandate to gain authorization and to gain the authority to sample materials that the Department believes may be hazardous waste. The criteria and lists for classifying wastes found in existing State regulations and the characteristics and lists proposed in these regulations for classifying wastes were created to provide specific guidance for generators in determining if their waste meets the definition of a hazardous waste found in statute (Health and Safety Code section 25117.) Thus, Section 66261.1(b)(2)(B) is being deleted.

Secondly, Section 66261.1(b)(2)(A) will be incorporated into Section 66261.1(b)(2) because no further division into subsections is necessary. There is now only one regulatory provision in this subsection.

Thirdly, Section 66261.1(b)(2) is being modified to conform the the language of the corresponding 40 CFR section. The provision of 40 CFR Section 261.1(b)(2)(i) which applies the statutory definition of hazardous waste for the purposes of RCRA sections 3007 and 3013 is being moved into proposed subsection (b)(2). The reference to RCRA sections is being changed to references to State law as follows. RCRA section 3007 details the EPA's authority to inspect and sample wastes which it believes may be hazardous wastes pursuant to the statutory definition of hazardous waste; this reference is being changed to a reference to Health and Safety Code Section 25185, the Department's authority to inspect persons managing or potentially managing hazardous waste. RCRA section 3013 establishes authority for the EPA to require monitoring, analysis, and testing of materials at a facility which is handling or has handled hazardous waste if the EPA believes that there may be hazardous waste at the facility or if the EPA feels that a release of hazardous waste from such a facility would pose a hazard. This reference is being changed to a reference to Health and Safety Code Section 25187.1 which establishes equivalent authority in State law. The authorities granted the Department under this subsection apply only to wastes that the Department believes may be hazardous wastes at an operation which handles or has handled hazardous waste or that the Department feels may pose a hazard. This authority allows the Department only to either characterize the material it feels is a hazardous waste or to require its characterization. This characterization is done pursuant to the normal waste classification procedure in proposed Section 66261.3 rather than by applying the statutory definition in lieu of the normal waste classification procedure. If the

materials are not classified as hazardous wastes by application of proposed Section 66261.3, they do not need to be managed as hazardous wastes.

Note, however, that existing State law regarding classification of wastes as hazardous or nonhazardous applies professional judgement and testing to classify wastes as hazardous wastes (66696(a)(6)). This authority allows classification of wastes which meet the statutory definition of a hazardous waste but may not meet the criteria of a hazardous waste as hazardous due to information or test results not prescribed in the regulations. This authority is being preserved in proposed Section 66261.3(a)(2)(F) but will be limited to the Department's classifying waste. For clarity, the regulated community will need only to apply the characteristics of a hazardous waste and the lists to make waste classification decisions.

Comment: N5 - Sections 66261.3(b)(2)(F) and 66261.3(e)

Commentor N - Morrison and Foerster for:
National Electrical Manufacturers Association

Comment: "In effect proposed sections 66261.3(b)(2)(F) and 66261.3(e) also provide that a waste or waste mixture may be defined as hazardous under the general statutory definition, even though the waste or waste mixture does not meet any of the specific tests or criteria adopted by DHS in the regulations to identify hazardous wastes. These provisions are inappropriate and unnecessary for the same reasons as those outlined above in connection with proposed section 66261.2(b)(2)." (See comment I4) "Furthermore, if it is revised as suggested above, section 66261.1(b)(2) will adequately address any inspection, monitoring or imminent hazard circumstances that warrant use of the broader statutory definition. Therefore, proposed sections 66261.3(b)(2)(F) and 66261.3(e) are unnecessary and should be deleted. If the change is made, the reference to section 66261.3(e) in proposed section 66261.101 should also be deleted."

Response to comment: The Department is partially accommodating this comment. The Department has analyzed existing State law (66300 CCR) and determined that the "mixture rule" presented in Section 66261.3(e) as originally proposed was incorrect and unnecessary. For a complete discussion of the proposed mixture rules, see the response to comment I3.

Because no finite set of characteristics or lists can identify all wastes which are hazardous, it is necessary for the Department to have the authority to classify wastes as hazardous wastes pursuant to the statutory definition of a hazardous waste. The Department is retaining this authority in proposed Section 66261.3(a)(2)(F). For example, the bottom sediments from the holding ponds at Kesterson Wildlife Refuge did not meet any of the existing Title 22, Division 4, Chapter 30, Article 11 criteria for classification

as a hazardous waste. However, deformed waterfowl hatched at the refuge provided clear evidence that the levels of selenium in the sediment met the criteria of Health and Safety Code Section 25117 in that environmental damage was not only possible, but had actually occurred. Because this definition does not offer clear guidance to the generator in classification of his waste, the Department is limiting this classification criterion to the Department. The regulated community will only be required to to classify their wastes using the objective criteria presented in proposed Section 66261.3.

The provisions of Section 66261.1(b)(2) have been modified to apply only to the Department's monitoring, inspection, and imminent hazard authorities. Thus, Section 66261.3(a)(2)(F) is necessary to complete the Department's authority to classify hazardous wastes pursuant to Health and Safety Code Section 25117. For further discussion of this topic, see the response to comment N4.

Comment N6.1 - Section 66261 Appendix X

Commentor - Morrison and Foerster for
National Electrical Manufacturers Association

Comment summary: "First, Appendix X is not clear as the which forms of the materials identified the lists refer to. For example, mercury and mercury compounds appear on one of the lists, raising a question as to whether the list might be interpreted to include mercury contained in fluorescent and HID lamps."

Comment response: The intent of the listings was to identify wastes as presumptively hazardous if they were specifically listed or contained, as a constituent of the waste, a material that is listed in Appendix X. Fluorescent and High Intensity Discharge lamps containing mercury are interpreted to meet the presumptive listing of mercury and mercury compounds in Appendix X. Subdivision (a) of Appendix X has been modified to clarify that wastes listed in the appendix are presumed to be hazardous; however, generators can self-determine if their wastes are nonhazardous according to the procedures set forth in title 22, Cal. Code Regs., section 66262.11. No change was proposed by the commentor; therefore, no change was made based upon this comment.

Comment N6.2 - Section 66261.3 (a)(2)(C)
(includes comment addressed to Section 66262.11 (b))

Commentor - Morrison and Foerster for
National Electrical Manufacturers Association

Comment summary: "Second, although we believe based on proposed section 66260.200 that DHS's intent is to allow waste generators to make the determinations themselves, the provision that a waste may

be "demonstrated" not to be hazardous by specified means could be misinterpreted as requiring a formal demonstration to DHS."

Comment response: See response to Comment D-6 Section 66261.3 (a)(2)(C) (includes comment addressed to Section 66262.11 (b)).

Comment N6.3 - Section 66261, Appendix X

Commentor - Morrison and Foerster for
National Electrical Manufacturers Association

Comment summary: The commentor states that because waste producers are obligated under proposed title 22, Cal. Code Regs., section 66260.200 to determine whether their wastes are hazardous regardless of whether the wastes are listed in Appendix X, proposed title 22, Cal. Code Regs., section 66261.3 (a)(2)(C) is duplicative and unnecessary. The commentor recommends the best way to resolve this concern is to delete title 22, Cal. Code Regs., section 66261.3 (a)(2)(C) as well as Appendix X. Alternatively, the commentor recommends that proposed title 22, Cal. Code Regs., section 66261.3 (a)(2)(C) be amended to state : "It is listed in Appendix X to this Chapter, unless the person who produces or manages the waste determines it is not hazardous by either: ...".

Comment response: Health and Safety Code section 25140 requires the Department to prepare and adopt a listing of wastes which are determined to be hazardous or extremely hazardous. Therefore, Appendix X cannot be deleted. The list provides a systematic procedure for assessing the hazardous properties of wastes. It serves as the first tier of a multiple tier assessment procedure. All of the materials listed in Appendix X are known through experience or testing to possess one or more of the hazardous characteristics of toxicity, corrosivity, ignitability or reactivity which contributes to the basis for the presumption of hazardousness of the listed materials. Appendix X serves a

Comment O1 - Section 66261 Appendix II and III

Commentor - Orrick, Herrington and Sutcliffe

Comment summary: "Stabilization (also known as fixation) is a proven treatment technology that reduces the mobility of the arsenic and is currently being evaluated by the United States Environmental Protection Agency (EPA) as a best demonstrated available technology. However, the classification of all wastes in the State of California must be determined through application of the Waste Extraction Test (WET). See title 22 California Code of Regulations Sections 66699, 66194, 66700. The procedures of the WET effectively nullify the stabilization of arsenic wastes. Because the WET does not accurately simulate environmental conditions and does not advance the goals of proper waste classification in this

context, it is inappropriate for the classification of stabilized arsenic-containing wastes. It is almost impossible using the best available stabilization technology to create a stabilized waste that is capable of passing this test.
The procedures of the test that involve milling, removal of non-friable material, and leaching with sodium citrate solution creates an artificial environment for stabilized arsenic-containing wastes that is not representative of the conditions the stabilized waste is likely to encounter in waste disposal practices. Using the WET to determine the hazardousness of stabilized arsenic waste essentially precludes the use of this treatment technology, leaving responsible parties for arsenic sites requiring remediation with no viable treatment or disposal options after the land ban on characteristic arsenic wastes goes into effect in 1990. This situation is not consistent with federal and state regulatory goals to have at least one viable management option for every hazardous waste and to encourage use of treatment technologies that reduce the mobility, toxicity and volume of hazardous wastes."
The commentor made the following recommendations:

"(a.) Generate a comprehensive data base on the leachate characteristics after stabilization using various leaching solutions.

(b.) Study the effects of milling techniques on the leaching properties of arsenic to reduce analytical variability, and standardize the milling techniques most likely to represent an accurate simulation of environmental conditions.

(c.) Consider the use of a more equitable WET leaching solution to simulate realistic post-stabilized environment. This precedent has been established by the use of deionized water to leach chromium instead of sodium citrate. See Section 66700(e) of the existing DOHS regulations.

(d.) Consider establishing in the regulations an exemption for stabilized arsenic wastes from application of the WET test. Instead, allow application of a less aggressive test, such as the TCLP test. The TCLP test would represent a stringent test but would be less likely to nullify artificially the effects of the stabilization process."

Comment response: The recommendations proposed by the commentor are not within the scope of this rulemaking package. However, in response to each recommendation:
Recommendation (a.) is not an issue concerning regulation, but more aptly an issue to be presented and discussed at the program operations level. The commentor may wish to discuss the issue separately with the Alternative Technology Division.
Recommendation (b.) is also not an issue concerning regulation, but more aptly an issue to be presented and discussed with the Hazardous Materials Laboratory. The Hazardous Materials Laboratory participated extensively in the development of the Waste Extraction Test prior to its adoption in 1984.
According to the Final Statement of Reasons prepared as part of the Department's rulemaking (R-45-78) and filed with the Secretary of State on September 27, 1984,..."(t)he sample preparation procedures set forth are to ensure consistent and significant results in the analyses for both the total and the extractable (by WET)

substances. The first important step is the removal of the extraneous materials such as rocks and pebbles, wood and plant pieces, and fragments of manufactured items of metal, plastic, rubber, and glass which might be found particularly in soils and in ashes in burning municipal wastes. Second, it is important that the solids in the waste, for analysis, not exceed a specified particle size and, if necessary, that the solids be milled so as to not exceed that size. WET results have indicated that the extraction proceeds efficiently with solids which pass through a number ten standard sieve, as sieves are identified and standardized by the ASTM (ASTM 1977). Milling the solids to a maximum particle size is necessary to ensure reproducibility of the extraction test particularly because it will result in an equalization of the surface area, geometry, and other properties of the waste." Establishing a minimum particle size was not determined to be necessary, in part, because the smaller the particle size, the more substances can be extracted resulting in a more conservative estimate of the extractable concentration, and also, because some wastestreams exist as very small particles to begin with.

Concerning recommendation (c.), according to the Final Statement of Reasons prepared as part of the Department's rulemaking (R-45-78), sodium citrate was selected as the extraction solution after careful consideration. As stated on page 118 of the Department's rulemaking (R-45-78),..."use of the citric acid in WET is justified because (a) it is functionally similar to naturally occurring organic and biochemical matter found in landfills and soils, environments in which wastes are likely to be placed, (b) as a moderate complexing agent, it is more likely to provide a conservative prediction of the environmental mobility of toxic materials in wastes than other known chelating agents, and (c) it has been used by researchers to test the extractability of toxic metals in various wastes."

The commentor's statement that a precedent had been established for use of deionized water instead of sodium citrate to leach chromium as a justification for using a different extraction solution for arsenic containing waste is premature. Sodium citrate was replaced with deionized water only for hexavalent chromium because in the presence of sodium citrate, hexavalent chromium can be reduced to trivalent chromium. Hexavalent chromium is the more toxic species of chromium; therefore, use of sodium citrate may underestimate the concentration of hexavalent chromium and underestimate the hazard associated with the waste. Use of deionized water would provide a more conservative prediction of hexavalent chromium concentration. To adopt a similar practice for arsenic waste because sodium citrate is too aggressive towards extracting arsenic goes against the Department's practice of adopting the conservative approach towards regulating hazardous waste.

Instead of changing in regulation the extraction solution to be used for arsenic containing wastes, the variance procedure in title 22, Cal. Code Regs., section 66260.21 is the appropriate way to address changes in analytical or testing methods.

Concerning recommendation (d.), an exemption is an inappropriate resolution to this issue, instead the generator may request a variance pursuant to title 22, Cal. Code Regs., section 66260.210

or a reclassification pursuant to title 22, Cal. Code Regs., section 66260.200 (f). These regulatory options have been exercised in the past.

The Waste Extraction Test does not preclude the use of stabilization as a viable treatment technology or disposal option after the land ban goes into effect in 1990. The 1990 land ban prohibits the land disposal of untreated hazardous wastes (emphasis added). If a waste has been successfully treated to meet the treatment standard, meets a treatment standard prior to treatment or is exempt from a treatment standard, it can be land disposed. Meeting the treatment standard for land disposal and meeting the criteria for nonhazardous classification are two separate issues. A response to the use of the Toxicity Characteristic Leaching Procedure instead of the Waste Extraction Test is addressed in Comment J-1 Section 66261.24 (a) (includes comment addressed to Section 66261.101).
The modifications are rejected.

Comment P1 - Section 66261.4

Commentor P - Heller, Ehrman, and McAuliffe for:
Dow Chemical Company

Synopsis of comment: Both State and federal hazardous waste control law contain provisions requiring reduction in the amount of hazardous waste generated and ban land disposal of untreated hazardous wastes. These programs are the most environmentally important of the new initiatives in hazardous waste management. To facilitate reductions in the amounts of hazardous waste generated and to encourage the development of new treatment technologies, EPA has promulgated the treatability studies definition and exemption found in 40 CFR Section 260.10 (definitions) and 40 CFR Section 261.4 (e) and (f) (actual exemption). EPA states in their preamble to this federal register notice (53 FR 27290, July 19, 1988) that regulating these treatability samples under the permit regulations sends the wrong message to the regulated community by placing barriers to conducting them. In addition, the EPA lists several limitations on sample size, sample management, and the treatability study itself which establish environmentally sound qualifications to this exemption. Because of these limitations, this exemption poses a De minimis hazard to human health and safety or the environment. The commentor then states that these limitations would support the adoption of this exemption by California because of the same De minimis risk. The commentor further states that the permit requirement (by lack of exemption) for treatability studies is not necessary to protect human health or the environment.

Response to comment: The exemptions found in proposed Section 66261.4 are those that the Department's statutory and regulatory examination found in existing State law. The Department recognizes that the EPA adopted the treatability studies exemption after

careful deliberation and public comment. While the exemption for treatability studies may conceivably qualify for exemption under State hazardous waste control law, the Department cannot make such a decision without carefully studying the implications of that decision. This rulemaking is intended to conform State hazardous waste regulations to the mandate of Health and Safety Code section 25159 et seq to write regulations to gain authorization to operate the State's hazardous waste program in lieu of the federal RCRA program. Thus, adoption of exemptions beyond those contained in existing State law is beyond the scope of this rulemaking.

The State does, however, agree with the commentor that the approaching total ban on land disposal of untreated hazardous waste and the undesirability of disposing of untreated waste may make some sort of exemption for treatability samples and studies desirable. The Department is currently studying this provision and may initiate a separate rulemaking for its incorporation.

Comment Q1 - Section 66261.4

Commentor Q - California Legislative Services

Comment: "The provision on treatability, proposed Section 66261.4(d)(1), does not include the specific federal exclusion for treatability study samples contained in 40 CFR 264.1(e).

After May 8, 1990 provisions of Senator Roberti's SB 1500 require that all wastes undergo treatment prior to disposal. Treatability studies will be necessary to determine if wastes are amenable to treatment, what pre-treatment might be necessary, and what are optimal process conditions, treatment efficiency or the characteristics and volumes of residuals from particular processes. By their nature, the studies are not substitutes for commercial treatment or storage activities. Additionally, treatment studies are necessary for evaluation of cleanup activities, prior to their commencement. And, finally, current EPA policy is not to regulate as hazardous waste samples collected for such studies.

It is our understanding that staff feels that it will be possible to include such samples within the general language providing for exclusions. That need for further clarification would be obviated were the Department to adopt the federal exemption for small-scale treatability studies.

We recommend that adoption of the federal exemption for small-scale treatability studies be included in proposed section 66261.4(d)(1)."

Response to comment: The Department agrees that a treatability studies exemption is desirable to allow waste generators to determine the characteristics of their waste when subjected to certain processes as discussed in this comment. However, this exemption is not included in existing State law and its adoption is

beyond the scope of this rulemaking. For further discussion of this point, see the response to comment P1.

Comment Q2 Section 66261.24 (a)

Commentor - California Legislative Services

Comment summary: The commentor states that as presently drafted, title 22, Cal. Code Regs., section 66261.24 (a) requires use of the California Waste Extraction Test (WET) to identify if a waste exhibits California toxicity even though it might pass the federal Extraction Procedure (EP) toxicity test. The commentor agrees with the Department's approach to the extent that it does not conflict with the State's geothermal operations and current statutory exemptions. The commentor believes that as a condition of EPA approval the federal Toxicity Characteristic Leaching Procedure (TCLP) might possibly be incorporated into these regulations on the basis that the TCLP is more stringent than California's WET. The commentor expressed concern that the ramifications of such a change have not been subject to public review of the necessity for such a proposal, particularly as it might apply to wastes which are exempt under RCRA. If the federal TCLP is considered for adoption, the commentor strongly urges the Department to provide for continued use of the California WET for classifying exploration and production wastes and other RCRA exempt wastes.

Comment response: See response to Comment J-1 Section 66261.24 (a) (includes comment addressed to Section 66261.101).

Comment R1 - General

Commentor R - W. P. Harper, Shell Western E&P Inc.

Comment: "These comments are submitted on behalf of Shell Western E&P Inc. (SWEPI). SWEPI fully endorses and incorporates by reference herein the joint industry comments that have been submitted on behalf of several trade associations including the Western States Petroleum Association (WSPA)."

Response to Comment: Please see response to Comment S1.

Comment R2 Section 66261.24 (a)

Commentor - Shell Western E & P Inc.

Comment summary: The commentor states that title 22, Cal. Code Regs., section 66261.24 (a) directs that the California Waste Extraction Test (WET) be used to identify wastes that exhibit the characteristic of EP toxicity or California toxicity through

exceedance of the Soluble Threshold Limit Concentrations or Total Threshold Limit Concentrations. The commentor agrees with this approach, however, the commentor is concerned about the potentially severe regulatory consequences that will follow in California if the federal Toxicity Characteristic Leaching Procedure (TCLP) test is adopted. It is possible that the TCLP will be judged to be more stringent that the WET, and would have to be incorporated into the State regulations in order for California to maintain final authorization under RCRA. This change could require use of the TCLP to determine toxicity of all wastes in California. Use of the TCLP to all wastes could substantially increase the universe of hazardous waste in California and would threaten the very existence of some industries. Application of the TCLP to exploration and production wastes would result in substantially reduced energy production in California leading to significant economic consequences. The commentor requests that the proposed regulations be modified to allow use of the WET for classifying exploration and production wastes and other wastes exempt under RCRA, even if the TCLP is adopted for RCRA hazardous wastes. The commentor believes that the continued use of the WET for classifying exploration and production wastes is consistent with the Department's declared intention in the recodification process to maintain the status quo and to make only those changes required to obtain RCRA authorization.

Comment response: See response to Comment J-1 Section 66261.24 (a) (includes comment addressed to Section 66261.101).

Comment R3 - General

Commentor R - W. P. Harper, Shell Western E&P Inc.

Comment: "We support California's effort to obtain EPA's authorization to administer the federal hazardous waste program. However, we are concerned that some of the proposed regulations seem to go beyond both federal and state law. Proposed regulatory language which is supported by SWEPI, is included in the joint industry comments."

Response to Comment: Please see response to Comment S1.

Comment S1 - General

Commentor S - Michael O. Wang
Western States Petroleum Association

Comment: "The Western States Petroleum Association (WSPA) welcomes this opportunity to fully endorse and incorporate by reference the joint industry comments regarding the proposed recodification of California's Hazardous Waste Regulations that have been submitted on behalf of ourselves and several other trade associations. WSPA

is a trade association whose members conduct much of the producing, refining, transportation, and marketing of petroleum products in the Western United States.

"WSPA supports California's effort to obtain EPA's authorization to administer the federal hazardous waste program. However, we are concerned that some of the proposed regulations seem to go beyond current federal and state law. WSPA supports the proposed regulatory language which is included in the joint industry comments referenced above."

Response to comment: The Department has attempted to limit the differences between the proposed regulations and the Department's existing regulations to changes necessary to merge the requirements of existing state and federal law. The one major exception to this policy is the application of federal RCRA requirements to persons managing non-RCRA hazardous wastes. This decision was based on the importance of establishing one clear and uniform set of regulatory requirements. The Department has designated the joint industry comments incorporated by reference in this comment as Comments T1 to T42. See the responses to those comments for additional information.

Comment T1.1 - Chapter 11

Commentor T - Joint Comments - See commentor index

Comment: "Consistent with views expressed by Department staff, the proposed regulations should be clarified to confirm that the self-certification process requires no DHS involvement."

Response to comment: The Department is accommodating this comment. Several comments were received addressing the self-certification issue. The Department is responding to these comments in such a way as to affirm the self-certifying (self-determining) nature of the waste classification regulations. Existing State and federal law rely on the generator's self-certification to classify wastes; no change is planned in this approach to waste classification.

Comment T1.2 and T26 - Section 66260.10

Commentor T - Joint comments - see commentor index

Synopsis of comment: Department staff indicated that they do not intend to alter the "self-certifying" nature of the waste classification regulations. However, the proposed definition of "non-RCRA hazardous waste" requires generators to "demonstrate" tot the Department that their waste is not a RCRA hazardous waste. This requirement is inconsistent with the statutory definition (Health and Safety Code Section 25117.9), could easily be interpreted to go beyond the published regulatory criteria, and

imposes an unnecessary burden on the generator and the Department without justification. The commentor then includes suggested language in comment T26.

Response to comment: The Department is accommodating this comment. For further discussion of the subject of self-certification, see the response to comment M11.

The Department is not, however, adopting the suggested language verbatim. Only the word "determined" is being added. The commentor's inclusion of the words "determined by the generator" would limit the option to self-classify these wastes to the generator. This determination can actually be made by anyone managing these wastes.

Comment T1.3 - Section 66261.3 (a)(2)(C)
(includes comment addressed to Section 66262.11 (b))

Commentor - Joint Comments - see commentor index

Comment summary: "Second, proposed sections 66261.3 (a)(2)(C) and 66262.11 (b) both classify as hazardous wastes, wastes that are "listed" in Appendix X of Chapter 11, unless the generator has "demonstrated" that they are not hazardous either through testing the waste or by applying knowledge of the waste's properties. Although these sections clearly acknowledge some type of self-certification process, the actual implementation of the process is by no means clear. Our concern is heightened by the introductory language to Appendix X which uses th word "presumed" rather that "potential" (as in current section 66680 (c)) to describe the chemicals or substances appearing on the list.

Taken together, these proposed sections suggest that any waste that merely contains a chemical or substance listed in Appendix X is presumed to be hazardous, and that a generator must make a satisfactory demonstration to DHS of the nonhazardousness of the waste before managing it as such. The regulations appear to distort the self-certification process by requiring generators to rebut a presumption of hazardousness through demonstrations to the Department. This represents a significant departure from the current process. Moreover, unlike under the present system, generators would be left vulnerable to enforcement action unless they seek and obtain DHS concurrence with a nonhazardous waste determination before managing the waste as nonhazardous."

Comment response: See response to Comment D-6 Section 66261.3 (a)(2)(C) (includes comment addressed to Section 66262.11 (b)).

Comment T1.4 - Sections 66261.3(a)(2)(C) and 66262.11(b)

Commentor T - Joint comments - see commentor index

Synopsis of comment: (The commentor is discussing provisions where a person classifying a waste must make a demonstration to the Department in regards to that classification) Proposed Sections 66261.3(a)(2)(C) and 66262.11(a) require a generator to "demonstrate" that wastes listed as presumptive hazardous wastes in Appendix X to proposed Chapter 11 are not hazardous. Although these sections recognize some degree of self-certification, there is no clear process for making that demonstration. By requiring that a generator rebut a presumption of hazardousness, the self-certification procedure is distorted and generators are left open to enforcement actions if they have not made this demonstration to the Department. The use of "presumed" vs "potential" to describe the substances listed in this appendix compounds the problem. The commentor then, in comment T27, suggests language to correct these problems.

Response to comment: The Department is partially accommodating this comment. Both of these provisions are being changed to affirm that the waste classification procedure is entirely self-certifying. Everywhere in the waste classification regulations where a <u>demonstration</u> was required by the proposed regulations, the requirement is being changed to require that a person <u>determine</u> the proper classification. For a further discussion of the topic of self-certification, see the response to comment M11. The language suggested by the commentor is not, however, being totally adopted. The regulation sections cited above are being further altered in response to an EPA comment to clarify that one cannot determine or demonstrate that a listed hazardous waste (listed in proposed Article 4 of Chapter 11) is not a hazardous waste because it does not exhibit a characteristic of a hazardous waste. See response to comment A2.

Comment T1.5 - Section 66261.1(b)(2)(A)

Commentor T - Joint comments - see commentor index

Comment: "We also feel that proposed section 66261.1(b)(2)(A) provides that for purposes of the Department's inspection and monitoring authority, a material is deemed a hazardous waste if the Department has "reason to believe" the material meets the statutory definition in Health and Safety Code section25117. While we do not dispute the Department's authority to conduct inspections or order monitoring, testing or other analysis where it has reason to believe hazardous wastes are involved, we believe this section should be moved to Chapter 22 of the proposed regulations, which sets forth the Department's inspection and enforcement authority. The fact that the Department may have reason to believe a waste is hazardous does not mean that it is, and classification of wastes

solely on the basis of the Department's belief could create conflicts with the self-certification process."

Response to comment: The Department is partially accommodating this comment. The Department is modifying the provision in question so that it applies only to the Department's inspection and monitoring authorities rather than to waste classification. For further discussion of this topic, see the response to comment I1.

The Department will not, however, move this provision to the inspection regulations in Chapter 22. The Department has decided to leave this provision in Section 66261.1(b)(2) in order to conform to the statutory mandate that the Department adopt regulations conforming to the corresponding federal regulations (Health and Safety Code Section 25159.5(a). This provision will be left at its current location in the proposed regulations because it conforms to the location of the corresponding provision in the corresponding federal regulation (40 CFR Sections 261.1(b)(2)(i) and (b)(2)(ii)).

Comment T2 - 66266.20(b)(6)

Commentor T - Joint Comments, see commentor index

Comment summary: "2. <u>The imposition of a new permitting requirement on facilities that use or manufacture products from recyclable materials that are hazardous solely under California law goes beyond current DHS [sic] policy and will discourage beneficial recycling and reuse of such byproduct materials</u>.

Health and Safety Code section 25143.2(e)(1), as amended by AB 4636 [Ch. 1631, Stats. 1988], regulates all recyclable materials, whether hazardous under state or federal law, that are 'used in a manner constituting disposal' or that are used to produce products that are applied to the land. Prior to AB 4636 [Ch. 1631, Stats. 1988], arguably only certain types of recyclable materials (fertilizers, soil amendments, agricultural minerals, and auxiliary soil and plant substances) were subject to the restriction against use in a manner constituting disposal (see former Health and Safety Code section 25143.2(c)(1), as enacted by AB 2166 [Ch. 1594, Stats. 1985]), possibly allowing certain federally regulated wastes to slip through the net. The stated legislative purpose in amending [Health and Safety Code] section 25143.2(e)(1) was to close this gap and achieve equivalency with (but not surpass) the requirements of RCRA. Similarly, there was no intent to regulate a broader class of non-RCRA hazardous wastes under AB 4636 [Ch. 1631, Stats. 1988] than had been regulated under AB 2166 [Chap. 1594, Stats. 1985]. Accordingly, express provision was made in the statute to allow the Department to adopt regulations excluding certain materials that would otherwise fall within the broad language of [Health and Safety Code] section 25143.2(e)(1), as amended. Although not specifically stated, any such exclusions must necessarily be limited to non-RCRA hazardous wastes.

On December 29, 1988, the Western States Petroleum Association (WSPA) requested clarification of [Health and Safety Code] section 25143.2(e)(1) and requested an interpretation from the Department that the 'use in a manner constituting disposal' restriction applied only to RCRA-regulated activities. WSPA also requested that a list of excluded materials be developed as part of the recodification process. On March 17, 1989, WSPA received a letter from Mr. David Willis, Deputy Director of the Toxic Substances Control Division [sic], providing a copy of the Department's policy regarding use in a manner constituting disposal. Mr. Willis indicated that the Department intended to codify the policy and, in the interim, would follow the policy as if it were already adopted into regulation. Copies of the referenced policy and letter are attached as Attachment 2 [not included as part of this response].

Article 3 of Chapter 16 of the proposed regulations would codify the Department's policy on use in a manner constituting disposal. These regulations conform in most respects to existing policy and to the federal regulations in 40 C.F.R. [sic] section 266.20-.23 [sic]. There is one notable difference, however, which we believe is unnecessary from a legal standpoint and which will substantially impede industry's ability to beneficially [sic] reuse by-product materials. This is the new requirement that facilities that produce products that are to be applied to the land must be permitted by the Department unless the product itself is exempt (proposed section 66266.20(b)(6)).

We acknowledge that recyclable materials that are hazardous under RCRA are considered solid wastes when used in a manner constituting disposal and, as such, are subject to applicable transportation and storage requirements (see 40 C.F.R. [sic] section 266.21-.23 [sic]). But for the rulemaking authority granted the Department under Health and Safety Code section 25143.2(e)(1), a similar result would be reached under California law with respect to non-RCRA hazardous wastes. Given the legislative purpose behind AB 4636 [Ch. 1631, Stats. 1988], however, we believe the Department has been vested with the authority, as well as an obligation, to exclude non-RCRA hazardous wastes (other than the agricultural materials delineated in AB 2166 [Ch. 1594, Stats. 1985]) from the full scope of [Health and Safety Code] section 25143.2(e)(1). The Department may--and should--adopt regulations imposing a more limited set of conditions on non-RCRA hazardous wastes that are used in a manner constituting disposal or used to produce products that will be applied to the land than would be imposed on RCRA hazardous wastes. The Department is not constrained in the manner or extent to which it regulates non-RCRA recyclable materials that are destined for use in a manner constituting disposal.

Consistent with its 1987 policy, the Department does not currently require facilities that produce products such as asphalt and other construction materials from recyclable materials to have hazardous waste facility permits. The permitting requirement contained in section 66266.20(b)(6) of the proposed regulations is inconsistent with current policy and imposes unnecessary and

inappropriate regulatory burdens on manufacturing facilities that produce products from California-only recyclable materials. So long as the product meets the other requirements of [proposed] section 66266.20(b), the Department should not be concerned with how the product was manufactured. Since the purpose of the restrictions on use in a manner constituting disposal is to prevent the indiscriminate placement of hazardous waste on the ground under the guise of reuse, it is difficult to see how the imposition of a permitting requirement on the facility that renders the material suitable for reuse addresses that concern. The other conditions imposed by proposed Article 3 of Chapter 16---for example, the requirement to meet applicable treatment standards--are entirely sufficient for that purpose. Furthermore, routine manufacturing operations are not analogous to hazardous waste treatment and should not be regulated as such. Forcing such facilities into the hazardous waste system serves no legitimate purpose since adequate economic incentives already exist for proper storage and handling of the materials. When faced with the prospect of having to obtain hazardous waste [facility] permits, these manufacturing facilities will most likely forego the business, causing large quantities of recyclable materials that could otherwise be safely and beneficially reused to be discarded. As written, the proposed regulation would even preclude the beneficial use of products that were produced outside of California since, by definition, out-of-state manufacturing facilities are not subject to the Department's jurisdiction and cannot obtain DHS [sic] permits. This provision would impose an unreasonable burden on interstate commerce when applied to out-of-state facilities.

RECOMMENDATION: The proposed regulations should be revised to eliminate the DHS [sic] permitting and associated transportation-related requirements for facilities that manufacture or beneficially reuse products produced from recyclable materials that are hazardous solely under California law." [emphasis in original]

Comment response: The commentor essentially based this comment on an August 12, 1987 memorandum and associated correspondence from the Department that provided guidance for interpreting Health and Safety Code section 25143.2(c)(1), a section which, at that time, addressed "use constituting disposal". However, changes have since been made to that section of state law, to corresponding federal regulations, and to the Department's memorandum. Health and Safety Code section 25143.2(c)(1) has been amended and renumbered twice since 1987: AB 4636 (Ch. 1631, Stats. 1988) changed the section number to Health and Safety Code section 25143.2(e)(1) and reworded the content; AB 1847 (Ch. 1436, Stats. 1989) first retained and then changed the section number to Health and Safety Code sections 25143.2(e)(1) and (e)(2), and also retained and then further reworded the content, effective January 1, 1990. Corresponding federal regulations (40 CFR sections 266.20 through 266.23) have also been amended and renumbered since 1987, specifically section 266.20(b), to add (among other provisions) the federal treatment standards limitations as prerequisites for federal exemption of products produced from recyclable materials and used in a manner

constituting disposal. Lastly, the Department discovered several problems with its memorandum that have had to be corrected. Those problems included the following:

- The guidance in the August 12, 1987 memorandum was not essentially the same as corresponding federal regulations, even though the memorandum said it was. (The following two items explain why.)

- The memorandum essentially stated that if products produced from recyclable materials met the provisions set forth in that memorandum, then the products and the recyclable materials used to produce them were exempt from Department regulation. Corresponding federal regulations [i.e., 40 CFR section 266.20(b)] stated that if products produced from recyclable materials met the provisions specified in those regulations, then the products, but not the recyclable materials used to produce them, were exempt from federal regulation. Thus, the federal regulations were more stringent.

- The memorandum set forth STLC, TTLC and other (e.g., "no additional hazard") provisions for determining whether the hazardous constituents of recyclable materials were rendered inseparable from the products derived from them. If the recyclable materials were rendered inseparable (as specified), then the products could qualify for exemption from Department regulation. At the time the Department created its memorandum, corresponding federal regulations simply required that the recyclable materials be rendered physically inseparable from the products, so that the products could qualify for exemption from federal regulation. Since the federal regulations included no provisions exclusively for determining whether the recyclable materials had been rendered physically inseparable (one of the reasons why the Department created its memorandum), the Department's tests for constituents hazardous by criteria other than the STLC and TTLC would not necessarily substantiate that all of the recyclable materials were rendered physically inseparable from the products. Thus, the federal requirements were more stringent.

- The memorandum had to be updated to include the federal treatment standards requirements (which did provide tests for substantiating to some extent whether the recyclable materials were rendered physically inseparable from products derived from them) and the current references to state law, among other changes.

Since the commentor was apparently unaware of these problems with the Department's memorandum, the commentor could not necessarily have known that recyclable materials were not exempt from (for example) federal storage facility permit requirements, even if they were used to produce products that met the federal "physically inseparable" and related criteria of 40 CFR section 266.20(b).

(See the second and third items discussed in the above list of four problems.) Thus, the commentor's statement [in the first (i.e., the underlined paragraph) of the commentor's seven paragraphs] that the permit requirement in proposed section 66266.20(b)(6) was categorically new, is incorrect. However, for the universe of recyclable materials that are not stored prior to recycling, no federal permit requirements would generally apply and thus, for that limited universe, the permit requirement in proposed section 66266.20(b)(6) was new (i.e., differed from the Department's memorandum). Since the Department had stated in its memorandum that the federal "use constituting disposal" requirements were essentially those of the Department, the same requirements were imposed on recyclable materials that were non-RCRA hazardous wastes. Therefore, in deference to statements and commitments made in the Department's memorandum and associated correspondence, the comment has been accommodated, insofar as possible, as follows:

- The categorical permit requirement in proposed section 66266.20(b)(6), for facilities that process recyclable materials to produce products that meet the requirements elsewhere in section 66266.20(b), is being deleted.

- Instead, that permit requirement is being restricted to owners or operators of facilities that process recyclable materials which are RCRA or non-RCRA hazardous wastes, if the products produced from the recyclable materials fail to meet the provisions of proposed section 66266.20(b), as specified.

In the remainder of this response, the commentor's additional comments, which amounted to a defense of the commentor's conclusion, are discussed separately, as needed, to clarify or correct some technical points. The commentor's defense (consisting of the second through sixth of the commentor's seven paragraphs) did not alter the Department's decision, discussed above.

In the second of the commentor's seven paragraphs, the commentor stated that "Health and Safety Code section 25143.2(e)(1), as amended by AB 4636 [Ch. 1631, Stats. 1988], regulates all recyclable materials, whether hazardous under state or federal law [RCRA], that are 'used in a manner constituting disposal' or that are used to produce products that are applied to the land." As discussed above, that section has been amended and renumbered as Health and Safety Code sections 25143.2(e)(1) and (e)(2), effective January 1, 1990. The two subsections separately address RCRA and non-RCRA hazardous wastes that are used in a manner constituting disposal. Thus, the commentor's citation is no longer valid.

Also in the second of the commentor's seven paragraphs, the commentor stated that, "Prior to AB 4636 [Ch. 1631, Stats. 1988], arguably only certain types of recyclable materials (fertilizers, soil amendments, agricultural minerals, and auxiliary soil and plant substances) were subject to the restriction against use in a manner constituting disposal..., possibly allowing certain federally regulated wastes to slip through the net." This

statement is incorrect. AB 2166 (Ch. 1594, Stats. 1985), which preceded AB 4636 (Ch. 1631, Stats. 1988), excluded from eligibility for the exemptions in Health and Safety Code section 25143.2, any recyclable materials "used in a manner constituting disposal of the material, or any material used to produce a product that is applied to the land as a fertilizer". Thus, since at least 1986, recyclable materials used in a manner constituting disposal have been fully regulated by the Department, regardless whether the materials were used in agriculture, contrary to the commentor's statement. AB 4636 (Ch. 1631, Stats. 1988) merely restated that provision. Furthermore, AB 2166 (Ch. 1594, Stats. 1985) included a provision then Health and Safety Code section 25143.2(c)(6)] which prevented RCRA-regulated recyclable materials from qualifying for any exemption which did not also exist under corresponding federal regulations.

In the fourth of the commentor's seven paragraphs (the third paragraph requires no response), the commentor stated that the permit requirement "is unnecessary from a legal standpoint and...will substantially impede industry's ability to beneficially [sic] reuse by-product materials." This statement is incorrect. As discussed above in this response, the permit requirement in proposed Section 66266.20(b)(6) is not entirely new and is legally necessary, at least in part, because corresponding federal regulations generally require a permit for storage of recyclable materials prior to recycling them, regardless whether the products produced from them are regulated. Also, the permit requirement would, as any regulation would, be expected to impede the regulated activity to some degree, at least. However, the permit requirement would also promote health and environmental protection by reducing the potential for hazards caused by operation of the permitted facility.

In the fifth of the commentor's seven paragraphs, the commentor stated that under AB 4636 (Ch. 1631, Stats. 1988), the Department "has been vested with the authority, as well as an obligation, to exclude non-RCRA hazardous wastes (other than the agricultural materials delineated in AB 2166 [Ch. 1594, Stats. 1985]) from the full scope of section 25143.2(e)(1)." Although the Department has been given authority to exclude from regulation non-RCRA hazardous wastes, the Department believes that it is not at all legally obligated to do so. AB 4636 (Ch. 1631, Stats. 1988) [as well as AB 1847 (Ch. 1436, Stats. 1989)] clearly stated that the Department <u>may</u> adopt regulations to exclude recyclable materials from regulation, which is a permissive, but not obligatory, authority. Thus, the commentor's statement is incorrect.

Also in the fifth of the commentor's seven paragraphs, the commentor stated essentially that the Department may and should adopt regulations imposing a more limited set of conditions on non-RCRA hazardous wastes (that are used in a manner constituting disposal or used to produce products that will be applied to land) than would be imposed on RCRA hazardous wastes. However, the commentor also stated, "The Department is not constrained in the manner or extent to which it regulates non-RCRA recyclable

materials that are destined for use in a manner constituting disposal." This statement is incorrect. Although the Department may adopt regulations pursuant to Health and Safety Code section 25143.2(e)(1) [and now (e)(2), under AB 1847 (Ch. 1436, Stats. 1989)] to exclude recyclable materials from regulation, the Department is also constrained by other sections of law which specifically establish the scope of the Department's rulemaking authority. For a pertinent example, Health and Safety Code section 25150(e) requires the Department to adopt regulations for the recycling of hazardous wastes "to protect against hazards to the public health, domestic livestock, wildlife, or to the environment and to encourage the best use of natural resources." Thus, the Department must satisfy these responsibilities and constraints before deciding to exclude recyclable materials from regulation, under this or under any other applicable provision of state law.

In the sixth of the commentor's seven paragraphs, the commentor stated that, "consistent with its 1987 policy, the Department does not currently require facilities that produce products such as asphalt and other construction materials from recyclable materials to have hazardous waste facility permits. The permitting requirement contained in section 66266.20(b)(6) of the proposed regulations is inconsistent with current policy". These statements are incorrect, due partly to the problems with the Department's memorandum, as discussed above. The Department requires all such facilities to have permits, unless all of the following apply: the products conform with the applicable standards set forth in the Department's memorandum and the proposed regulations; the recyclable materials used to make those products are non-RCRA hazardous wastes; and the products are not used in agriculture. (If the recyclable materials are RCRA hazardous wastes, a permit would still not be required if the materials are not stored prior to recycling.) Thus, contrary to the commentor's opinion, the permit requirement of proposed section 66266.20(b)(6) is at least in part consistent with the Department's policy.

Also in the sixth of the commentor's seven paragraphs, the commentor stated that:

- The permit requirement "imposes unnecessary and inappropriate regulatory burdens on manufacturing facilities that produce products from California-only recyclable materials." Contrary to the commentor's statement, this permit requirement is the same permit requirement presently imposed by the Department on most recyclers of recyclable materials that are non-RCRA hazardous wastes. Since "use constituting disposal" represents one of the potentially more hazardous uses of such recyclable materials, the Department believes that an exemption from permit requirements for the processors who do not store the recyclable materials before recycling them is generally unwarranted, except when the recyclable materials are used to make products which meet the requirements of proposed section 66266.20(b) and which are not used in agriculture.

- "So long as the product meets the other requirements of section 66266.20(b), the Department should not be concerned with how the product was manufactured." As previously discussed, the Department concurs in part with the commentor's statement, and thus with the commentor's remaining statements in that context in the sixth paragraph, except as follows:

  - The commentor's statement that "routine manufacturing operations are not analogous to hazardous waste treatment and should not be regulated as such" implies that the routine nature of a process essentially makes that process unlike a hazardous waste treatment process, even though the processes might otherwise be identical (except, of course, for the types of materials to be processed). Thus, a routine distillation process used to extract and purify a solvent from petroleum should not, in the commentor's opinion, be regulated under permit even it it were used to purify the same solvent, but from a mixture of hazardous wastes instead of from petroleum. Current state law and regulations disagree, since Health and Safety Code section 25143.2(a) and Title 22, CCR, sections 66798 through 66802 generally require the Department to regulate recyclable materials as any other hazardous wastes.

  - The commentor's statement that, "forcing such [manufacturing] facilities into the hazardous waste system serves no legitimate purpose since adequate economic incentives already exist for proper storage and handling of the materials" implies that such economic incentives are always significant and always exist. Neither are necessarily true, as (for example) the variations in the market prices of most metals and other commodities that could be obtained from either raw materials or recyclable materials will attest. For this and other reasons, neither the USEPA nor the Department have based the extent of their regulations on the relative values (i.e., economic incentives) associated with recyclable materials.

  - Lastly, the commentor stated that, "as written, the proposed regulation would even preclude the beneficial use of products that were produced outside of California since, by definition, out-of-state manufacturing facilities are not subject to the Department's jurisdiction and cannot obtain DHS [sic] permits." Since out-of-state recycling facilities and their products are, of course, outside the Department's jurisdiction, the permit requirement in proposed section 66266.20(b)(6) simply has no force or effect in those cases. However, certain aspects of those cases might be the subjects of a future rulemaking. Nevertheless, since proposed section 66266.20(b)(6), is being deleted for other reasons discussed above, the comment needs no further response.

Comment T3 and T28 - Section 66261.7

Commentor T - Joint comments - see commentor index

Synopsis of comment: The current DHS policies regarding empty drums should be adopted into regulation. Under these policies, the Department exempts from regulation under the hazardous waste control law (1) empty containers that have been properly triple rinsed and (2) empty, but unrinsed, containers that are returned to a supplier of the material fro refilling with the same substance. Their long and widespread use has demonstrated that they work well, providing adequate protection for human health and the environment in an economic manner. Also, the proposed regulations do not include the language in 40 CFR section 261.33(c) exempting drum residues returned to the supplier for reuse. These policies should be included in the regulations to establish definite and uniform standards to eliminate confusion about the status of empty drums. Not including these rules would cause many suppliers of chemicals to end the practice of accepting used drums for refilling rather than obtain TSDF permits. That effect would decrease environmental protection by diverting large volumes of drums into scarce Class I landfill space and create higher costs for processing drums.

The commentor then recommends that the Department adopt new Section 66261.7 addressing management of empty containers by generators. That section should provide that empty containers, whether rinsed or unrinsed, are not subject to regulation if they are intended for refilling with the same substance e and further that empty containers that have been triple-rinsed are not subject to regulation. Under that section, triple rinsing would not require a permit; however, any rinsate generated from rinsing operations would have to be managed pursuant to applicable regulations. The commentor then suggests language in comment T28.

Response to comment: The Department is partially accommodating this comment. The Department acknowledges that existing State law regarding classification of containers which previously held hazardous material or hazardous waste is complicated. In response to the comments concerning empty container regulations, the Department is including a restatement (with additions and clarifications) of current State law regarding empty containers in this package. The Department is not adopting 40 CFR 261.7 but is rather adopting a version which maintains the current State stringency in a more workable format. For a provision-by-provision justification of the proposed contaminated container regulations and their deviation from the corresponding federal law see the portion of the Statement of Reasons which addresses proposed Section 66261.7.

The proposed empty container regulations would encourage shipment of contaminated drums to drum recyclers by requiring that these drums otherwise be disposed of as hazardous waste. The Department has always encouraged beneficial reuse or reclamation of drums and continues to encourage this practice in the proposed regulations by inclusion of the provisions of proposed Section 66261.7(c)(2) and

(c)(3), (d)(2) and (d)(3), and (f). Section 66261.7(f) requires that contaminated drums be regulated as hazardous waste meaning that recycle is the preferable alternative to expensive treatment (to meet treatment standards required for all hazardous wastes by May 8, 1990 pursuant to Health and Safety Code Section 25179 et seq) or disposal in a class I landfill. Drums are also declared to be a "recyclable hazardous waste type" in proposed Section 66266.2 subject to specified actions pursuant to Section 66266.1 if these drums are not recycled. Shipment of contaminated drums to the original manufacturer would be doubly encouraged by inclusion of the statement in Section 66261.7(c)(3) allowing certain containers to be returned to the original manufacturer for refilling. This statement is not based on a DHS policy; it is based on interpretation of Health and Safety Code Section 25143.2(b)(2) which exempts from regulation a hazardous waste "...used or reused as a safe and effective substitute for a commercial product" (ie: a new drum). The inclusion of proposed Section 66261.7(c)(3) applies Health and Safety Code Section 25143.2(b)(2) to specific hazardous wastes, contaminated containers. The Department is indeed committed to recycle or cleaning of emptied containers to avoid using limited hazardous waste landfill space for recyclable containers.

The policy allowing unmanifested shipment of drums to recyclers of drums will not be incorporated into these regulations. These regulations require that contaminated containers greater than 5 gallons be managed as hazardous waste. Current State law contains no exemptions from regulation for contaminated containers. DHS policies are not regulations because they have not been adopted pursuant to the Administrative Procedures Act. Because this policy is not current law, the Department will not adopt it into regulation. This policy derives from a Departmental decision to defer regulation of drum recyclers pending study of that industry. These regulations are incorporating protective standards. For a provision-by-provision explanation of these regulations see the portion of the statement of reasons which addresses proposed Section 66261.7.

The commentor's suggested language is not being directly adopted although several of the suggested provisions are being adopted. Although the commentor's suggested language of (a) is not being adopted, a provision with the same effect is being transferred from Health and Safety Code Section 25143.2(d)(5) for purposes of clarity.

The suggested language of (b) is not being adopted; in its place, a provision is being proposed which would require triple rinsing only for containers which had held commercial chemical products which are acutely hazardous wastes. The Department feels that it is necessary to require a permit for rinsing all but the smallest (less than 5 gallons) containers because of the hazards associated with rinsing larger containers. Small containers may be easily manipulated and are of small volume. These containers can be easily rinsed by sloshing solvent around the inside and inverting the container to drain it. Larger containers are heavier and

bulkier; they cannot be rinsed without special rinsing equipment. These containers must also be rinsed with significantly larger volumes of solvent with a concomitant larger risk of problems arising from the rinsing process. These hazardous conceivably include explosions, spills, worker exposure to solvent, and increased possibility of reaction between larger volumes of incompatible residue and solvent. Because containers of 5 gallons or less are common in industry and can be easily manipulated by hand, the Department chose to establish that size as the cutoff for requiring a permit for the rinsing operation.

The containers addressed in (c) of the commentor's suggested language would be regulated as hazardous waste if the inner liner did not successfully protect the container; however, if the inner liner was successful in preventing contamination of the container, the container would not be a contaminated container and would not be subject to regulation as a hazardous waste.

Lastly, the language suggested for Section 66261.33(c) allows exemption of any residue in a container rinsed pursuant to the commentor's proposed container rules. Under the Department's proposed regulations, these residues are to be fully regulated unless the container is of 5 gallons of less in size and has been rinsed (or triple rinsed, as applicable), in which case neither the container nor any residue in it would be regulated (but the rinsate would be subject to regulation). The Department also intends to regulate any residues removed from containers returned to drum reconditioners because this residue can add up to substantial quantities after multiple drums are cleaned.

Comment T4

Commentor T - Joint comments, see commentor index

Comment: These same considerations should lead the Department to conclude that treatment in accumulation tanks is consistent with sound waste management. In fact, many of the types of treatment specified above are conducted by generators today as part of their waste minimization programs, without regulatory involvement by the Department. Under section 66262.34, the performance standards of Articles 9 and 10 of Chapter 15 apply to the generator's accumulation containers or tanks, and should be adequate to ensure protection of human safety and the environment whether storage or treatment occurs in them. Articles 9 and 10 of Chapter 15 also contain handling requirements for ignitable, reactive and incompatible wastes, which should be adequate to ensure that treatment methods that pose a danger to human safety or the environment are not employed.

Comment response - See response to comment T29

Comment T5

Commentor T - Joint comments, see commentor index

Comment: On a related matter, we note that the labeling requirements in proposed section 66262.34(f) that apply to containers used for satellite accumulation go beyond the requirements of Health and Safety Code section 25123.3(d)(4). Under the statute, a generator is only required to label the container with the initial date of accumulation and the words "hazardous waste." Information concerning the composition and physical state of the waste and statements regarding the particular hazardous properties of the waste does not need to be indicated on the label.

RECOMMENDATION: Proposed section 66262.34 should be amended to make clear that treatment in accumulation tanks is permissible without interim status or a permit so long as the generator complies with other pertinent requirements of that section. Appropriate changes to the labelling requirements should also be made. See Attachment 1 for proposed language.

Comment response: See response to comment B2

Comment T6 - Subpart F (Article 6)

Commentor T - Joint Comments - see commentor index

Comment: "Contrary to the Department's stated intention, numerous aspects of the proposed groundwater monitoring requirements for interim status and permitted facilities go substantially beyond current state and federal regulations.

We appreciate the State's efforts to develop a single set of ground water monitoring requirements that will be applied uniformly by the Department and the Regional Water Quality Control Boards. We assume and request the Department's concurrence that, as a consequence of this cooperative effort, groundwater monitoring programs developed for Class I regulated units will be incorporated without change into the Waste Discharge Requirements for those units, thus eliminating a previous source of regulatory inconsistency and possible duplication of effort. We also support the Department's efforts to build some flexibility into the monitoring requirements so that potentially significant increases in monitored parameters may be verified under an expedited procedure before the next level of monitoring is triggered.

There are a number of specific issues in the proposed regulations which are of concern, however, because they impose groundwater monitoring requirements in excess of those specified under current EPA, Title 22 or Subchapter 15 regulations and are not necessary for obtaining authorization under RCRA. These proposed regulations, which are discussed in detail below, are inconsistent

with the Department's basic premise in this process--to maintain the status quo in California unless necessary to achieve equivalency with RCRA. While some justification for some of the changes is provided in the Statement of Reasons, we believe further technical and legal justification is needed, as well as some form of cost/benefit analysis."

Comment Response: The general concern expressed in this comment, is that the proposed regulations impose new groundwater monitoring requirements that are not necessary for obtaining authorization and that have not been fully justified in the statement of reasons. The Department agrees that, as first proposed, the regulations contained a few provisions that should have been accompanied by further technical justification and cost/benefit analysis. As discussed in detail in the responses to those individual comments, those sections have been modified in the proposed regulations.

In addition to receiving RCRA authorization, a major goal of this rulemaking is to adopt regulations that are consistent with regulations enforced by the State Water Resources Control Board. Therefore, as part of the effort to receive authorization for RCRA, the Department and the State Water Resources Control Board worked together to prepare a set of water quality monitoring regulations that could be adopted by both agencies to provide consistent requirements for the regulated community. Although existing 40 CFR Part 264 Subpart F was used as the base document, changes were made in order to incorporate the more stringent requirements in existing California regulations. As explained in the Statement of Reasons, the proposed regulations include several major structural changes and numerous minor modifications that allow the owner or operator and the permit writer greater flexibility to design an efficient monitoring program.

The adoption of these regulations will allow greater coordination between the Department and the state and regional water boards. The commentor's request that ground water monitoring programs developed in compliance with these regulations be incorporated without change into waste discharge requirements (WDRs) cannot be accommodated in these regulations. Waste discharge requirements are issued by regional water quality control boards. Those boards enforce Title 23 of the California Code of Regulations. These proposed regulations will be adopted into Title 23 by the State Water Resources Control Board. However, adoption into Title 22 will not immediately require changes to WDRs. It should be noted, however, that Health and Safety Code section 25204.5 requires the Department to incorporate WDRs into hazardous waste facility permits.

Comment T7 - Sections 66264.90(a) and 66265.90(a)

Commentor T - Joint Comments - see commentor index

Comment: "As a threshold matter, the applicability of the groundwater monitoring requirements needs to be clarified. Reserving comment for the moment on the definition of 'regulated unit,' we are assuming that the monitoring requirements do not apply to facilities that are not actively managing (i.e., treating, storing or disposing of) hazardous waste on the effective date of the regulations. We base our conclusion in this regard on the initial sentence of sections 66264.90(a) and 66265.90(a) which states that:

> 'The regulations in this article apply to owners or operators of facilities that treat, store, or dispose of hazardous waste.'

As we understand the proposed regulatory scheme, facilities which are not actively managing hazardous waste on the effective date of the regulations are not subject to the new groundwater monitoring requirements. In particular, such facilities should not be required to initiate monitoring activities at inactive sites that ceased receiving hazardous waste prior to the effective date of the RCRA regulations (November 19, 1980). We believe that any contrary reading of the proposed regulations would not be authorized by the Health and Safety Code and would constitute unlawful ex post facto regulation.

RECOMMENDATION: The proposed regulations should be revised to accomplish the following goals:

1. Clarify that the monitoring requirements do not apply to facilities that have no active hazardous waste management units on-site."

Comment Response: The commentor's understanding of the quoted language is different from the meaning intended by the Department. 40 CFR Section 270.1(c) requires all owners and operators of surface impoundments, landfills, land treatment units, and waste piles that received waste after July 26, 1982, or that certified closure after January 26, 1983, to get post-closure permits unless they clean close the units by removing all wastes. Those facilities requiring a post closure permit must comply with the requirements of subpart F, 40 CFR Part 264 (Chapter 14 of the proposed regulations). The commentor interpreted proposed regulations sections 66264.90(a) and 66265.90(a) as only applying to facilities "actively managing hazardous waste" on the effective date of the regulations. The commentor emphasized that no monitoring should be required at facilities that ceased receiving wastes prior to the effective date of the RCRA regulations (November 19, 1980). The proposed groundwater monitoring regulations apply to the owner or operator of any facility which has a regulated unit that receives or has received hazardous waste since November 19, 1980. To eliminate the ambiguity reflected in

the comment, the phrase "facilities that treat, store or dispose of hazardous waste" that was in the first sentence of subsection (a) of section 66264.90 as originally proposed has been replaced with the phrase, "permitted hazardous waste facilities." This change will allow the second sentence in proposed subsection (a) to govern the application of Article 6 without a potential conflict with the first sentence in this section. Subsection (a) of proposed section 66265.90 has been modified to replace the phrase, "facilities that treat, store, or dispose of hazardous waste" with the phrase, "interim status hazardous waste facilities." This change has been made for the same reasons discussed above.

In addition, section 66264.90 has been modified to make the applicability of these regulations at permitted facilities discretionary for units that have not received hazardous wastes since July 26, 1982. Section 66265.90 has been modified to make the applicability of these regulations at interim status facilities discretionary for units that have not received hazardous waste since November 19, 1980. The Department is maintaining discretion to require monitoring and response programs for such units based on its authority to protect human health and the environment. The Department's authority to take action when necessary to protect human health and the environment does not constitute a Constitutionally prohibited bill of attainder or ex post facto law, even if the Department's action results in the imposition of new requirements at inactive hazardous waste facilities.

Comment T8

Commentor T - Joint Comments - see commentor index

Comment: "The proposed regulations also lack any 'grandfather' provisions or phased-in compliance schedule for facilities (i) which have already received Part B permits, (ii) which newly obtain interim status, or (iii) which are currently operating under interim status. Since the proposed regulations do not incorporate the RCRA "permit as a shield" concept, facilities that are in full compliance with the groundwater monitoring conditions of their Part B permits on the date the regulations go into effect, or new interim status facilities coming into existence after the effective date of the regulations, could be cast into immediate noncompliance. It is therefore essential that the proposed regulations allow permitted and new interim status facilities a reasonable period of time to come into compliance with the new monitoring requirements. Similarly, existing interim status facilities would immediately face potential enforcement actions over the adequacy of their monitoring systems, even though they may be in full compliance with all groundwater monitoring requirements of their Interim Status Documents.

An additional consideration comes into play with existing interim status facilities. In particular, the proposed regulations conform the monitoring requirements for interim status facilities with

those applicable to permitted facilities. While we understand and agree with the general proposition that there is no technical reason to distinguish between interim status and permitted facilities for purposes of groundwater monitoring, we believe cost/benefit considerations strongly support application of the proposed regulations to new interim status facilities only, i.e., those which acquire interim status after the effective date of the regulations. Existing interim status facilities should be allowed to continue their current monitoring programs pending issuance of a Part B permit. Under Health and Safety Code section 25200.7, the Department is required to issue Part B Permits to all existing hazardous waste management facilities no later than November 1992. Requiring these facilities to accelerate those modifications by approximately two years, without any assurance that the upgrading process would not have to be repeated during the permitting process, poses an unreasonable burden on the Department and the regulated community, without commensurate environmental benefit.

RECOMMENDATION: The proposed regulations should be revised to accomplish the following goals:

2. Specify a three-year compliance period for facilities that have already received Part B permits as of the effective date of the regulations."

Comment Response: The change recommended in this comment has not been incorporated into the proposed regulations. However, in response to this and other comments, a schedule of compliance has been added to allow 180 days after the effective date of the proposed regulations for the submittal of proposed monitoring programs that will satisfy the new requirements. Since the proposed regulations are expected to replace the existing federal requirements enforced by the Department and EPA, and since the proposed regulations parallel regulations being proposed by the State Water Resources Control Board, a monitoring and response program designed to satisfy the proposed regulations should satisfy the requirements of all three agencies.

Comment T9 - Article 6

Commentor T - Joint Comments - see commentor index

Comment: "With respect to definition of "regulated unit," we so no legal basis for the elimination of the effective date by which such units are identified under current regulations. Under the RCRA regulations applicable to permitted facilities, only those "regulated units" that received hazardous waste after July 26, 1982 are subject to groundwater monitoring (solid waste management units are not subject to full Subpart F monitoring). Similarly, current Title 22 imposes monitoring obligations only upon those facilities that were in operation on the effective date of the regulations, i.e., February 2, 1985. Finally, Subchapter 15 expressly applies

to new and existing units only (i.e., those in existence as of November 27, 1984), unless the Regional Board has reason to believe that an inactive site is posing a threat to groundwater (22 Cal.Code Regs. _ 2510(g)). The proposed regulations include within the definition of "regulated unit" all units which receive or have ever received hazardous waste. Contrary to the justification provided in the Statement of Reasons, there is no blanket requirement under current law or regulation to conduct full RCRA monitoring at inactive sites. The imposition of such a requirement--which is more appropriately tied to the Department's authority under the California Superfund-is not supported by the Hazardous Waste Control Law.

In addition, as a consequence of the elimination of the effective date from the definition of regulated unit, interim status facilities will immediately be required to install groundwater monitoring systems at all inactive units. The requirement goes significantly beyond current state and federal laws and regulations by imposing at least the investigatory portions of a corrective action program on interim status facilities. Under RCRA, these obligations are not triggered until a facility receives its Part B permit. We see no statutory basis in RCRA or the Hazardous Waste Control Law for imposing routine monitoring requirements during interim status on units which did not receive any hazardous waste after November 19, 1980.

Furthermore, the proposed regulations do not indicate what criteria are to be used to determine whether wastes that were disposed of in now inactive sites were hazardous. Many wastes which may have been hazardous at the time of disposal have been subject to natural biodegradation processes, weathering and other natural physical or chemical processes which over time render them nonhazardous by today's standards. If the regulations were adopted as proposed (which we hope will not be the case, in light of our comments above), would this determination to be made as of the time of disposal, as of the effective date of the regulations, or as of the date the site may be discovered (if not currently known to exist)? The Statement of Reasons is devoid of any discussion of this issue. Further, given the possible adoption of the federal Toxicity Characteristic Leaching Procedure, it is likely that the universe of hazardous waste will undergo a significant expansion, with obvious ramifications to the questions raised in this comment.

The costs associated with installation and operation of complete monitoring networks on all regulated units, as defined in the proposed regulations, is conservatively estimated at tens of millions of dollars per year. This number is likely to be even greater given the proposed restrictions on the ability to use a single monitoring system to monitor more than one unit (see comments below on "contiguous" units). We do not believe that these costs can be justified. The Regional Boards have jurisdiction to require monitoring on a case-by-case basis at inactive sites. Full TSD facility monitoring--which seeks to detect statistically significant evidence of releases from units that are currently managing wastes--is unnecessary for the more

limited purpose of determining whether old sites have leaked. The latter information can be obtained through routine site characterization and Superfund activities, rather than through periodic monitoring of lengthy lists of analytes at specified frequencies.

RECOMMENDATION: The proposed regulations should be revised to accomplish the following goals:

3. Specify that only those interim status facilities that come into being after the effective date of the regulations are subject to the proposed interim status groundwater monitoring requirements and grant such facilities a three-year period to achieve compliance. Existing interim status facilities should be allowed to maintain the monitoring programs established in their Interim Status Documents until such time as a Part B permit is obtained.

4. Include an effective date (July 26, 1982) in the definition of "regulated unit."

5. Defer all corrective action monitoring at inactive sites until issuance of the facility's Part B permit."

Comment Response: In response to this and other comments, a schedule of compliance has been added to allow 180 days after the effective date of the proposed regulations for the submittal of proposed monitoring programs that will satisfy the new requirements. Since the proposed regulations are expected to replace the existing federal requirements enforced by the Department and EPA, and since the proposed regulations parallel regulations being proposed by the State Water Resources Control Board, a monitoring and response program designed to satisfy the proposed regulations should satisfy the requirements of all three agencies.

In response to this and other comments, section 66264.90 has also been modified to make the applicability of these regulations at permitted facilities discretionary for units that have not received hazardous waste since July 26, 1982. Section 66265.90 has been modified to make the applicability of these regulations at interim status facilities discretionary for units that have not received hazardous waste since November 19, 1980. The Department maintains the authority to require monitoring and response programs for such units when necessary to protect human health or the environment.

The proposed water quality monitoring requirements for interim status facilities do not include a corrective action program for regulated units or requirements to perform corrective action for solid waste management units. During the permitting process, the facility investigation and assessment will identify any inactive regulated units that contain hazardous waste and that require monitoring and will identify those solid waste management units that require corrective action. When the federal regulations for solid waste management units are promulgated, the Department will

review, modify if necessary, and incorporate those requirements into Article 19.

Comment T10 - Article 6

Commentor T - Joint Comments - see commentor index

Comment: "The proposed regulations also eliminate the current state and federal exemptions for units that do not receive liquid hazardous waste and that meet other specified criteria (see 40 C.F.R. __264.90(b) and 265.90(c); 22 Cal.Code Regs. __ 67180(d) and 67191(b)). No explanation for this deletion is provided in the Statement of Reasons " other than that it "is consistent with the more stringent requirements of existing Subchapter 15" (SOR, p. B-145). In our judgment, facilities which can meet the conditions specified in the existing sections cited above could well qualify for a site-specific waiver from monitoring under section 13269 of the California Water Code. At a minimum, the proposed regulations should allow facility owners or operators to apply for exemptions to groundwater monitoring requirements. While we understand that the review of exemption requests consumes considerable staff resources, the elimination of an existing exemption should not be based on this consideration alone.

RECOMMENDATION: The proposed regulations should be revised to accomplish the following goals:

6. Restore the exemption for units that can make a successful no-migration demonstration."

Comment Response: The Department has broad authority to grant exemptions pursuant to H&SC Section 25143 and proposed Title 22 Section 66260.210. The owner or operator of a regulated unit that is not regulated pursuant to RCRA or that could be granted an exemption from federal monitoring requirements can petition the Department for an exemption pursuant to section 66260.210.

Comment T11 - Article 6

Commentor T - Joint Comments - see commentor index

Comment: "With respect to the issue of 'contiguous' units, we believe the proposed regulations again go beyond what is required under current state and federal regulations, without adequate technical justification. Under current regulations, several units may be monitored by a single monitoring system even though they are not literally "contiguous" (see 40. C.F.R. __ 264.95(b)(2) and 265.91(b); 23 Cal.Code Regs. _2553(c)).[2] The proposed regulations appear to require that only those units that are actually directly adjacent to each other may share monitoring systems. The Statement of Reasons notes, however, that "it is the experience of the

Department that [shared monitoring] can lead to poor monitoring performance where the several units are spread out across the facility" (SOR, p. B-153; emphasis added).

We do not quarrel with the Department's rationale for restricting the availability of shared monitoring for units that are separated by significant distances. However, we believe that, unless defined to allow a reasonable degree of latitude based on site-specific hydrogeological factors, the standard of "contiguousness" is unnecessarily restrictive, both for the Department and industry. Furthermore, the cost of installing and operating redundant monitoring systems cannot be justified. The inability to use shared monitoring systems, where justifiable from a hydrogeological standpoint, will be especially problematic if inactive sites become subject to the monitoring requirements. We agree that the primary goal of a monitoring system should be to detect releases at the earliest possible time, but this standard must be implemented in light of what is technically justifiable.

RECOMMENDATION: The proposed regulations should be revised to accomplish the following goals:

7. Define the term 'contiguous' to allow a reasonable degree of flexibility in designing and operating shared monitoring systems."

Comment Response: Existing Subchapter 15 states : "If waste management units are located close together, separate ground water monitoring systems are not necessarily required for each unit provided that monitoring provisions will enable earliest detection and measurement of waste constituents that have leaked from the units. The regional board may establish appropriate compliance points for contiguous waste management units in such cases." (emphasis added)

Under the proposed regulations the Department has tried to emphasize the responsibility of the owner or operator to consider each regulated unit separately when designing an appropriate water quality monitoring program. There is nothing in the regulations to prevent the use of the same monitoring point in the monitoring system for two or more regulated units - as long as it is appropriate. It is expected, for example, that data from background monitoring points will frequently be shared by two or more units. Each unit is, however, to have its own monitoring program, designed specifically to either detect or remediate releases from that unit. The Department believes that this provision will provide the most flexibility to design an efficient monitoring program that eliminates unnecessary duplication of effort.