

regulating them. Non-mobile elementary neutralization units pose no greater threat to human health and the environment than transportable ones which are eligible for permit by rule under existing and proposed State regulations. They indeed pose less of a threat because they are not subject to transportation accidents and are located in secured facilities. The federal exemption for wastewater treatment units is also narrow and protective. It is based on adequate regulation under the Clean Water Act and is adequately regulated under that law. The commentor then recommends exempting all three types of unit under State law.

Response to comment: See response to comment T34

Comment T17 & T35 - Section 66261.3(e)

Commentor T - Joint comments - See commentor index

Comment: "The proposed regulations should make clear that, as under current regulations, excavated contaminated soil is subject to the same self-certification procedure as other wastes.

Section 66300(a)(3) of current Title 22 provides that hazardous material spilled onto land is a hazardous waste, except as provided in section 66305. Section 66305 allows a producer to determine that a particular waste (other than listed wastes or mixtures containing listed wastes) is nonhazardous and having so determined, to proceed to manage the waste as nonhazardous. We do not dispute the Department's ability to require the removal of hazardous materials spilled onto soil, even where resulting concentrations in the soil are below hazardous levels. Reading sections 66300(a)(3) and 66305 together, however, the self-certification procedure clearly applies to contaminated soil which has been excavated and is awaiting further management. The same methodology for managing contaminated soils exists under RCRA.

The proposed regulations appear to backslide and are ambiguous as to whether soil which has become contaminated solely by characteristically hazardous (as opposed to federally listed) material may be classified as hazardous or nonhazardous in the same manner as other wastes. This ambiguity is created by proposed section 66261.3(e)(2) which appears to create a different standard for classifying mixtures resulting from hazardous materials spills onto land, e. g. contaminated soil.

If the proposed regulations are read to prohibit self-classification of the excavated contaminated soil, the cleanup of routine spills and leaks of hazardous materials and subsequent efficient management of spill residues will be impeded due to the burdens that will be placed upon the Department and industry by the administrative process. Large volumes of slightly contaminated soil that are not readily amenable to treatment due to low concentrations of hazardous constituents would be sent to Class I landfills in order to avoid the delays inherent in obtaining

Department approval of nonhazardous disposal. Given the lack of Class I space and the minimal risk presented, we believe the Department's interest in allowing self-certification of contaminated soil is high.

RECOMMENDATION: To eliminate any ambiguity with respect to this issue, we propose that a section be added to the regulations to state that excavated soils contaminated with materials or wastes which are hazardous by characteristic only are subject to self-classification. This provision would not apply to determine whether contaminated soil must be cleaned up in the first place, or to determine the level of rededication necessary for contaminated soil. Suggested regulatory language is contained in Attachment 1."

The commentor then suggests language in Comment T35 (contained in Attachment 1).

Response to comment: This comment is being partially accommodated. The Department is deleting proposed Section 66261.3(e) in favor of the other "mixture rules" found in Section 66261. For a complete discussion of the proposed and existing "mixture rules", see the response to comment I3.

The Department is not, however, following the commentor's suggested language. The general waste classification procedure (proposed Section 66261.3(a)(1) and (a)(2) will identify any material which exhibits a characteristic of a hazardous waste or which is listed as a hazardous waste as being a hazardous waste. For mixtures of other materials with federally listed hazardous wastes (proposed Article 4 to Chapter 11), the proposed regulations parrot back the mixture rules of 40 CFR Part 261. These mixture rules are discussed in detail in the response to comment I3. Thus, the addition of specific language to address contaminated soil is not necessary because the normal waste classification procedure and the mixture rules stated in proposed Section 66261.3 will properly classify contaminated soils and any other mixtures containing hazardous material or hazardous wastes.

The Department affirms that the process of classifying contaminated soil is self-certifying as are all the waste classification regulations except for proposed Section 66261.3(a)(2)(F). That classification criterion is directed to the Department and need not be applied by the regulated community.

Comment T18 - Comment numbered incorrectly - This comment is actually part of comment T17.

Comment T19 & T36 - Section 66261.4

Commentor T - Joint comments - See commentor index

Comment: "The proposed regulations could be improperly interpreted to exclude the federal exemption for treatability studies and samples and should be clarified to eliminate this ambiguity."

The proposed regulations do not specifically exclude treatability study samples and samples undergoing treatability studies at laboratories and testing facilities, as do the federal regulations. DHS staff have stated that samples collected for such studies fall within the general language of proposed section 66261.4(d)(1) (excluding samples). However, since the federal regulations provide a separate exclusion for treatability study samples which has not been incorporated into the proposed regulations, it would appear that the Department's omission of the exclusion could be interpreted to subject such studies to the full panoply of hazardous waste requirements.

Samples collected for treatability studies, as that term is defined by EPA, should not be regulated as hazardous wastes. A "treatability study" is a study to determine, through treatment, whether a hazardous waste is amenable to the treatment process, what pretreatment may be required, optimal process conditions, treatment efficiency or the characteristics and volumes of residuals from a particular process. EPA also considers liner compatibility, corrosion and other material compatibility and toxicological and health effects studies to be treatability studies. Such studies are necessary to evaluate treatment options for CERCLA cleanup activities, RCRA corrective action and voluntary cleanups. In addition, the land disposal restrictions require the development of new treatment capacity which in turn is dependent on the research provided by treatability studies.

The imposition of unnecessary regulatory barriers sends the wrong message to the regulated community. The intent should be to promote, not defeat, research and development in support of the state and national objectives to reduce land disposal of hazardous wastes and to increase reliance on waste minimization and treatment technologies that reduce risk to human health and the environment. A conditional exemption for small-scale treatability studies maintains a balance between encouraging such research and ensuring that the removal of regulatory barriers does not result in unwarranted or increased risks.

For the reasons stated above, we recommend adoption of the federal exemption for small-scale treatability studies. Suggested language which conforms to that in 40 C.F.R. section 264.1(e) is set forth in Attachment 1."

The commentor then suggests language for a treatability studies exemption in comment T36.

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. Therefor, the Department cannot consider adding the suggested language of comment T35 in 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.

However, proposed Section 66261.4(d) et seq does apply to treatability samples which meet all the requirements of that section for exemption of samples. This exemption is applicable to analytical samples to determine the "...composition and characteristics..." of the sample (Section 66261.4(d)(1)) and applies to treatability samples because the treatability of a sample is one of its characteristics. The commentor is also correct in stating that the general hazardous waste control regulations apply to nonqualifying treatability study samples and to treatability studies under both existing law and these regulations as proposed.

Comment T20, AD4, J5, F3, D14, Sections: 66264.1 & 66265.1 AI25,  
AH13, G2 66260.10

Commentor T - Joint comments submitted by Kahl Associates  
Commentor AD - Aerojet General  
Commentor J - Southern California Gas Corp.  
Commentor F - Douglas Aircraft Co.  
Commentor D - Los Angeles Department of Water & Power  
Commentor AI - California Manufacturers Association  
Commentor AH - Chemical Waste Management Inc.  
Commentor G - Pacific Bell Co.

Comment summary: Inclusion of the word "transfer" in "hazardous waste facility" definition and in Sections 66264.1 and 66265.1 of proposed regulations makes the regulatory language ambiguous. Proposed language may be subject to interpretation that on site

transfer of hazardous waste are subject to regulations by the Department.

Recommendation: The definition of "transfer" should be amended to clarify that it is not intended to apply to on-site transfers of hazardous waste (see Health and Safety Code Section 25123.3 which defines "transfer facility" as any "off-site" facility which is related to the transportation of hazardous waste).

Suggested language changes: Modify the definitions of "Transfer" and "Transportation" in section 66260.10 as follows:

"Transfer" means the loading, unloading, pumping, or packaging of hazardous waste in connection with transportation.

"Transportation" means the movement of hazardous waste off-site by air, rail, highway or water.

Response: This comment has been accommodated by modifying the definition of "transfer" as following:

"Transfer" means the loading, unloading, pumping, or packaging of hazardous waste. Transfer does not include loading, unloading, pumping, or packaging of hazardous waste on the site where the hazardous waste was generated.

Comment T20.1: Comment AH13 seems to suggest that the impact of this ambiguity may extend to the transfer facility exemption in section 66263.18.

Response: The Department does not concur with the commentor's interpretation. Although "hazardous waste facility" as defined in Section 66260.10 has to comply with all applicable requirements of chapters 14, 15, 18 and 20, Section 66263.18 specifically provides exemption to transfer facilities from the requirements of chapters 14, 15, 18 and 20. Therefore, inclusion of the term "transfer" in "hazardous waste facility" definition does not pose any ambiguity to the transfer facility exemption in Section 66263.18.

Comment T21, AI30, J6, T38, - Section 66270.14 (m)  
AF94, X15

Commentor AI - California Manufacturers Association  
Commentor J - Southern California Gas Corporation  
Commentor T - Joint comments submitted by Kahl Associates  
Commentor AF - California Council on Economic &  
Environmental Balance  
Commentor X - San Diego Gas and Electric

Comment summary: The proposed regulations go beyond current State and federal regulations by unnecessarily requiring quantitative risk assessments to be submitted as part of the permitting process.

Recommendation: Delete subsection (m) of section 66270.14

Response: This comment has been accommodated by deleting subsection 66270.14 (m).

**Comment T22 - Various**

Commentor T - Joint Comments, see commentor index

Comment: "The proposed regulations go beyond the Hazardous Waste Control Law by allowing DHS to take enforcement action without regard to the regulated or nonregulated nature of the waste or activity involved.

Sections 66264.4 and 66265.4 of the proposed regulations authorize the Department to take enforcement action pursuant to Article 8 of the Hazardous Waste Control Law (HWCL) or section 25358.3 of the Hazardous Substance Account Act (HSAA) "notwithstanding any other provisions of these regulations."

First, the Department has no authority under Article 8 of the HWCL to take enforcement action in the absence of a violation of law involving hazardous waste. Even section 25187.5, which grants the Department the authority to order immediate corrective action to prevent an imminent substantial danger, must be predicated on the existence of a hazardous waste. Thus, the language in the proposed regulations which allows the Department to take enforcement action "notwithstanding any other provision of these regulations" is invalid on its face since the regulations (which incorporate the statutory definition of hazardous waste) represent the sole criteria for determining what is and what is not a hazardous waste. The proposed regulation leaves the public vulnerable to arbitrary enforcement actions by the Department.

Second, the proposed sections contain a reference to the Department's authority to take emergency response actions under the HSAA. Since the proposed regulations are being promulgated pursuant to the Department's authority under the HWCL, any references to other statutory enforcement powers are inappropriate, unnecessary and confusing.

We recommend that proposed sections 66264.4 and 66265.5 be deleted."

Response to Comment: This comment was accommodated in part by clarifications made during the post-hearing revisions. This section was revised to remove the phrase "Notwithstanding any other provisions of these regulations." It should be noted that the language was taken directly from the corresponding federal regulation. The comment was also accommodated by rearranging the reference to Chapter 6.5 of Division 20 of the Health and Safety Code to remove any ambiguous implications. The reference to Health

and Safety Code section 25358.3 was not deleted as requested because that section sets forth the Department's authority that corresponds to the federal authority referred to in the federal regulation. This section is necessary to maintain equivalency with federal law.

**Comment T23 and T40 - section 66264.314 (a) and (c)  
section 66265.314 (a)**

Commentor - Joint Comments (see Commentor index)

Comment summary: The commentor states that the proposed regulations are internally inconsistent and go beyond current State and Federal law by restricting the use of absorbents to eliminate free liquids in containerized waste. The commentor recommends that (a) be changed by adding the prefix "non" to "containerized waste". Section 66264.314 (c) should put back in the language deleted from 40 CFR section 264.314 (d) (1).

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". The 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 paint filter test.

**Comment T24 & T41 - Section 66261.3**

Commentor T - Joint comments - See commentor index

Comment: "The proposed regulations require that a generator who has obtained a site-specific exemption for a federally listed hazardous waste must still obtain a variance from the Department before the waste may be managed as nonhazardous in California. We believe that EPA's "delisting" procedures are sufficiently exhaustive and protective of the environment to justify the automatic declassification of federally delisted wastes in California or at least to render such wastes eligible for self-certification. We are not aware of, nor does the Department cite as examples, any delisted wastes that would still exhibit California hazardous waste characteristics. We believe that requiring generators to obtain variances from the Department, and to endure the very lengthy delays associated with that process, will result in the management of nonhazardous wastes as hazardous, for no justifiable reason.

We recommend that the proposed regulations be revised to allow automatic declassification of federally delisted wastes. Alternatively, delisted wastes could be made eligible for self certification. In neither case should a variance be required. Specific language is contained in Attachment 1."

The commentor then suggests specific language in comment T41.

Response to comment: The Department has received comments on several provisions in which a person is required to "demonstrate" that a particular material is not a hazardous waste. In all these cases the Department is revising its proposed regulations to affirm the self-certifying nature of the waste classification regulations. In the case of wastes excluded from the lists of 40 CFR Part 261, Subpart D (delisted), the proposed regulations are being modified by replacing the phrase "...has been granted a variance pursuant to Section 66260.210..." with the phrase "...has been excluded by the USEPA Administrator from 40 CFR Part 261 Subpart D pursuant to 40 CFR Sections 260.20 and 260.22..." This change is being made in Sections 66261.3(a)(2)(B), 66261.3(a)(2)(E), and 66261.3(d)(2).

However, the exclusion of a specific waste from the lists of hazardous wastes does not automatically mean that a waste is nonhazardous under existing State and federal regulations. 40 CFR Section 260.22(e)(4) states:

"(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261."

Thus, wastes which are delisted by the USEPA Administrator are may still be hazardous wastes if they exhibit a characteristic of a hazardous waste as set forth in 40 CFR Part 261, Subpart C. Because these wastes are not automatically nonhazardous under the federal rules, they cannot be automatically nonhazardous under State rules.

This change is being made at all three locations suggested by the commentor. The commentor's suggested language is not, however, being used because the Department prefers to use the federal language which refers to delisted wastes as being "...excluded from the lists of..." etc.

**Comment T25 - Sections 66262.50 through 66262.57**

Commentor T - Joint Comments

Comment:

"The proposed regulations inappropriately mandate EPA involvement in the exportation of non-RCRA hazardous waste. Proposed section 66262.50-66262.57 adopt the federal regulations for both RCRA and non-RCRA waste exports. In our experience, the EPA has declined to become involved with exports of non-RCRA hazardous waste. Thus, the proposed regulations cannot realistically be applied to non-RCRA waste. For example, the required EPA Acknowledgment of Consent form would be unobtainable.

Furthermore, the 60-day notification period is exceedingly burdensome for generators constrained by the 90-day storage period. As an example, a non-RCRA material such as spent nickel catalyst may be exported for metals reclamation. In order to determine the

proper disposition of the catalyst, time-consuming testing and analysis would be required. Contractual and transportation arrangements would then be needed in order to complete the notification to export. To provide notification of the export activity 60 days prior to export, the generator would have, at most, 30 days to complete the planning effort. This is unreasonably burdensome and would inhibit recycling. We recommend that the Department require a notification period of four weeks for non-RCRA waste exports, rather than the proposed 60-day period. This is consistent with the existing section 66515 of Title 22. RECOMMENDATION: We recommend that the Department adopt the proposed changes shown in Attachment 1 {these changes are listed as part of Comment T-25} to clarify the distinctions between RCRA and non-RCRA waste exports. Due to the fact that waste exporting is a complicated and unusual event, we also request that the Department include an address and phone number in section 66262.53 (b), similar to the information provided for the EPA. This would greatly assist in the notification effort.

Response: The subject regulations have been amended to clarify the applicability of certain requirements of this article for RCRA and non-RCRA hazardous waste exports. The four-week notification period for non-RCRA hazardous waste has been added as part of Section 66262.53 (b) for consistency with current state regulations. The address of the Department for notification mailing purposes has been added to Section 66262.53 (c). No telephone number has been added to this subsection because any future staff reassignments would make that number obsolete.

**Comment T26 - 66260.10**

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests language modifying the definition of "non-RCRA hazardous waste" to make it consistent with the self-determining nature of the waste classification regulations.

Response to comment: See response to comment T1.2

**Comment T27 - 66261.2, Appendix X to Chapter 11, 66262.11**

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests language to be added to and deleted from sections 66261.2, Appendix X Chapter 11, and 66262.11 which deleted appendix X entirely and modify the other sections to remove the presumption of hazardousness associated with listing in Appendix X.

Response to comment: See responses to comments T1 - T1.5, F4.2, and M11

Comment T28

Commentor T - (joint comments)

Comment summary: "The proposed regulations should be revised to reflect current DHS [sic] policy that allows generators to return unrinsed chemical containers to a supplier for refilling and to send triple rinsed [sic] drums to recycling facilities that are not otherwise subject to DHS [sic] jurisdiction.

Add new section 66261.7 (Used Containers) as follows:

Notwithstanding any other section of this division, a container or inner liner of a container that was used to contain a commercial chemical product or manufacturing chemical intermediate is not subject to regulation pursuant to this division if:

(a) The generator of the container intends to return it to a supplier of the same commercial chemical product or manufacturing chemical intermediate for refilling. This subsection applies whether or not the container has been rinsed prior to return to the supplier. A refilled container is not subject to regulation pursuant to this division.

(b) The container or inner liner has been triple rinsed [sic] using water, solvent or any other material capable of removing the commercial chemical product or manufacturing chemical intermediate. A generator may triple rinse [sic] containers pursuant to this subsection without obtaining a permit or interim status from the Department so long as the rinsate [sic] is managed in accordance with all applicable requirements of this division.

(c) In the case of a container with an inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, the inner liner has been removed."

Comment response: The commentor was apparently unaware that state law was being amended to exempt (conditionally) from Department regulation, unrinsed chemical product containers returned to a chemical supplier for refilling. AB 1847 (Ch. 1436, Stats. 1989) added that exemption as subdivision (d)(5) of Health and Safety Code section 25143.2, effective October 2, 1989. That subdivision addresses containers in a manner different from the manner proposed by the commentor. [The subdivision was renumbered as (d)(6), effective on and after January 1, 1990, as part of the same bill.] Thus, the comment has already been accommodated via state statute, to the extent specified in that bill. However, the Department has also added to the proposed regulations a section (proposed section 66261.7) specifically addressing small chemical containers (5-gallon capacity and less), although for reasons other than the commentor's comment, as discussed elsewhere in this "Statement of Reasons". That proposed section differs substantively from the commentor's proposed section. Accordingly, the Department cannot accommodate this comment, as written, for these and three other

reasons: (1) major changes like some of those that the commentor proposed, other than those described in the "Statement of Reasons" of the proposed regulations, are outside the scope of this rulemaking; (2) the comment is inconsistent with the Department's interpretation of existing state laws and regulations; and (3) the comment and proposed regulatory language are inconsistent with each other. The following paragraphs provide two examples of the last two of these reasons and address only containers which are not already addressed in proposed section 66261.7 (cited above).

First, the comment states that the Department's policy "allows generators to return unrinsed chemical containers to a supplier for refilling", but the commentor's proposed regulation states in subsection (a) that a container is exempt from Departmental regulation if the generator intends to return it to a supplier for refilling, regardless whether the container has been rinsed prior to its return. The two statements are inconsistent, because the Department interprets the definitions of "waste" and of "recyclable material" in Health and Safety Code sections 25124 and 25120.5, respectively, as inapplicable to product residues in containers that are to be refilled with the same products, but without being rinsed beforehand (as long as federal regulations are not more stringent). In that case, the product residues contribute to, and are indistinguishable from, the products that the suppliers add to the containers to refill them. (The refilled containers of products are not wastes and, of course, are not regulated.) However, if the generators rinse the containers prior to returning them to the suppliers, then the generators have determined that the product residues are wastes, and the generators become subject to Departmental regulation for treating and/or disposing of hazardous wastes, as applicable. Health and Safety Code section 25143.2(d)(6) only allows the suppliers, but not the generators, to rinse the containers prior to refilling them, as specified. Since the commentor's proposed regulation is inconsistent with state law by allowing the generators to rinse the containers, that proposed regulation cannot be used as written.

Second, the comment states that the Department's policy "allows generators to...send triple rinsed [sic] drums to recycling facilities that are not otherwise subject to DHS [sic] jurisdiction", but the commentor's proposed regulation states in subsection (b) that not only is a triple-rinsed container exempt from Departmental regulation but the generator who triple-rinses the container "pursuant to this subsection" is also exempt from Departmental hazardous waste facility permit and interim status requirements, provided that the rinse waters are managed as specified. The commentor's proposed regulation not only goes beyond the comment, but is inconsistent with state law, because triple-rinsing of containers constitutes treatment of a hazardous waste and as such is subject to Departmental regulation, including applicable permit requirements. Health and Safety Code section 25143.2(d)(6) only allows suppliers, but not generators, to rinse the containers without obtaining a permit to do so, as specified. Thus, the commentor's proposed regulation is inconsistent with

state law by allowing the generator to rinse the container, and so the commentor's proposed regulation cannot be used as written.

In summary, not only does the commentor address issues beyond the scope of existing state law and this rulemaking, but also incorrectly purports to embody the Department's policy on the management of containers contaminated with hazardous product residues. As such, the comment and proposed regulation cannot be accommodated or adopted, except to the extent that existing state law has already done so and that proposed section 66261.7 does so, but for reasons other than the subject comment.

**Comment T29 AG2, AI25, B4, - Sections 66262.34,  
F3, T4, T29, T34 66264.1, 66265.1**

Commentor AG - American Independent Refiners Association  
Commentor AI - California Manufacturers Association  
Commentor B - Tremco  
Commentor F - McDonnell Douglas  
Commentor T - Joint comments submitted by Kahl Associates

Comment summary: Proposed regulations should reflect current EPA policy that allows generators to treat hazardous waste in tanks without a permit.

Comment response: Proposed permitting and interim status requirements for facilities which treat, store, or dispose of hazardous waste are based on current CCR Title 22 regulations and Health and Safety Code statutes. The intent of RCRA authorization is not to repeal current regulations nor to adopt RCRA as such, but to adopt most stringent of these regulations. Adoption of EPA policy to allow generators to treat hazardous waste in tanks would make proposed regulations less stringent than the current State regulations. Therefore, your comment was not accommodated. We will, However, like to inform you that to address this issue for non-RCRA facilities, the Department is currently developing a permit streamlining program which will provide various regulatory options for certain categories of facilities/treatment processes.

**Comment T30(a) - Section 66264.90**

Commentor T - Joint Comments - see commentor index

Comment: "Modify subsection (a) of section 66264.90 (Applicability) as follows:

(a) The regulations in this article apply to owners or operators of facilities that treat, store, or dispose of hazardous waste after the effective date of these regulations. Treatment, storage or disposal facilities that receive a Part B permit from EPA or the Department prior to the effective date of these

regulations shall not be subject to the requirements of this article until three years after the effective date of these regulations or until such earlier time as the Department modifies the facility's Part B permit to include the requirements of this article pursuant to Article 4 of Chapter 20 of this division."

Comment Response: The exact changes recommended in this comment have not been made to the proposed regulations. However, based on this and other comments, Subsection 66264.90(e) has been added to provide the owner or operator a specific schedule (180 days) for submitting program modifications necessary to comply with the provisions of this article. Since most of the provisions of these proposed regulations are simply reflections of existing state and federal requirements, it is anticipated that the majority of permitted facilities will require only minor modifications to their existing monitoring programs. 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 T30(b) - Section 66264.90**

Commentor T - Joint Comments - see commentor index

Comment: "Modify subsection (a) of section 66264.90 (Applicability) as follows:

A surface impoundment, waste pile, land treatment unit or landfill that receives or has received hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") shall comply with the requirements of this article for purposes of detecting, characterizing, and responding to releases from regulated units. The facility permit shall contain assurances of financial responsibility for corrective action for all releases from any regulated unit at the facility."

Comment Response: In response to this and other comments, this section has been rewritten to make the applicability of these regulations discretionary for units that have not received hazardous waste since July 26, 1982. The Department maintains the

authority to require monitoring and response programs for such units when necessary to protect human health or the environment.

**Comment T30(c) - Section 66264.90**

Commentor T - Joint Comments - see commentor index

Comment: "Add new subsection (e) to section 66264.90 as follows:

(e) The owner or operator is not subject to regulation under this article if he or she demonstrates to the satisfaction of the Department that hazardous waste will not migrate from a regulated facility during the active life of the facility (including the closure period) and the post-closure care period specified under Section 66264.117. The demonstration that liquid will not migrate shall be certified by an independent certified engineering geologist or civil engineer registered in California. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this subsection on assumptions that maximize the rate of liquid migration."

Comment Response: This language has not been added to the proposed regulation as suggested in this comment. The elimination of this 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 T30(d), (e), and (f) - Section 66265.90**

Commentor T - Joint Comments - see commentor index

Comment: "Modify subsection (a) of section 66265.90 (Applicability) as follows:

(a) The regulations in this article apply only to owners or operators of facilities that obtain interim status to treat, store, or dispose of hazardous waste after the effective date of these regulations. A surface impoundment, waste pile, land treatment unit, or landfill that receives or has received hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") shall comply with the requirements of this article for purposes of detecting, characterizing, and responding to releases from regulated units. Existing facilities that are operating under interim status as of the effective date of these regulations shall continue to be subject to the groundwater monitoring requirements

set forth in the Interim Status Document issued to such facility and to the requirements of 40 C.F.R. Part 265, Subpart F."

Comment Response: The exact changes recommended in this comment have not been made to the proposed regulations. However, based on this and other comments, Subsection 66265.91(b) has been modified to provide the owner or operator a specific schedule (180 days) for submitting a water quality sampling and analysis plan that satisfies the provisions of Article 6. Since most of the provisions of these proposed regulations are simply reflections of existing state and federal requirements, it is anticipated that the majority of permitted facilities will require only minor modifications to their existing monitoring programs. 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.

**Comment T30(g) - Section 66265.90**

Commentor T - Joint Comments - see commentor index

Comment: "Add subsection (d) to section 66265.90 as follows:

(d) all or part of the monitoring requirements of this article may be waived if the owner or operator can demonstrate to the satisfaction of the Department that hazardous waste or hazardous waste constituents will not migrate from the facility to groundwater during the active life of the facility (including the closure period) and the post-closure care period. These demonstrations shall be in writing, and shall be kept at the facility. The demonstration that liquid will not migrate shall be certified by an independent, certified engineering geologist or professional civil engineer registered in California and shall establish the following:

(1) The potential for migration of hazardous waste or hazardous waste constituents from the facility via transport through soil or surface water.

(2) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the unsaturated zone or ground water, by an evaluation of :

(A) A water balance of precipitation, evapotranspiration, runoff and infiltration.

(B) Unsaturated zone characteristics (i.e., geological materials, physical properties and depth to ground water)."

Comment Response: This language has not been added to the proposed regulation as suggested in this comment. The elimination of this 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 T30(h) - Section 66260.10**

Commentor T - Joint Comments - see commentor index

Comment: "Amend the definition of 'regulated unit' in section 66260.10 as follows:

"Regulated Unit" means a surface impoundment, waste pile, land treatment unit or landfill that receives or has received ~~or~~ hazardous waste after July 26, 1982."

Comment Response: In response to this and other comments, this section has been rewritten to make the applicability of these regulations discretionary for units that have not received hazardous waste since July 26, 1982. The Department maintains the authority to require monitoring and response programs for such units when necessary to protect human health or the environment.

**Comment T30(i) and (j) - Section 66264.95 (b)(2) and 66265.90(b)(2)**

Commentor T - Joint Comments - see commentor index

Comment: "Modify subsection (b)(2) of section 66264.95 and section 66265.95 (Monitoring Points and the Point of Compliance) as follows:

(2) If the facility contains ~~contiguous~~ two or more regulated units that are located in the same vicinity, 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."

Comment Response: These changes have not been made to the proposed regulations because, 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 systems 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.

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 and monitoring along a shared boundary would impair the integrity of a containment or structural feature of any of the units, 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. 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."

**Comment T30(k) - Section 66264.97**

Commentor T - Joint Comments - see commentor index

Comment: "Modify subsection (e)(3) of section 66264.97 (Ground Water Quality Monitoring and system requirements) as follows:

(3) If a facility contains contiguous two or more regulated units that are located in the same vicinity, separate ground water monitoring systems are not required for each such unit if the owner or operator demonstrates to the satisfaction of the Department that the water quality monitoring program for each unit will enable the earliest possible detection and measurement of a release from that unit."

Comment Response: This change has not been made to the proposed regulations because, 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.

**Comment T31(a) and (b) - Sections 66264.93 and 66265.93**

Commentor T - Joint Comments - see commentor index

Comments: "Add new subsection (b) to sections 66264.93 and 66265.93 (Constituents of Concern) as follows:

(b) The Department may consider not specifying in the facility permit constituents the Department considers not capable of posing a substantial present or potential hazard to human health or the environment and not useful as an indicator of migration of hazardous waste. In deciding whether to grant an exemption, the Department will consider the following:

(1) Potential effects on public health and the environment that can result from migration of waste constituents that may enter soil, ground water, surface water or air outside the facility considering:

(A) The volume, physical and chemical characteristics of the waste in the regulated facility, including its potential for migration.

(B) The hydrogeological characteristics of the facility and surrounding land.

(C) The current and estimated future uses of the area.

(D) Any existing contamination or pollution, including other sources and their cumulative impact.

(E) The potential for health risks caused by human exposure to waste constituents.

(F) The potential damage to wildlife, crops, vegetation and physical structures caused by exposure to waste constituents.

(G) The persistence and permanence of the potential adverse effects.

(2) Potential adverse effects on surface and ground water quality after considering recommendations of the State Water Resources Control Board or the appropriate regional water quality control board.

(3) Capability of the substance to act as an indicator of the possible presence of a hazardous constituent of hazardous waste."

Comment Response: This language has not been added to the proposed regulation because in the proposed regulations, the Department has proposed a new approach to selecting monitoring parameters that should provide the owner or operator and the permit writer with the flexibility needed to design an efficient monitoring program with greater confidence than is possible under existing regulations. By periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not specifically provide for exemptions from the list of constituents of concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. The Department does, however, 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 a federal monitoring requirement can petition the Department for an exemption pursuant to section 66260.210.

**Comment T31(c) and (d) - Sections 66264.98(g) and 66265.98(g)**

Commentor T - Joint Comments - see commentor index

Comment: "Modify subsection (g) of sections 66264.98 and 66265.98 (Detection Monitoring Program) as follows:

(g) In addition to monitoring for the monitoring parameter specified under subsection (e) of this section, the owner or operator shall periodically monitor for all constituents of concern specified in the facility permit and determine whether the regulated unit is in compliance with the water quality protection standard using the statistical procedure specified under Section 66264.97(e)(7) of this article. Whenever the regulated unit is not in compliance with the water quality protection standard, it shall be considered statistically significant evidence of a release from the regulated unit. The Department shall specify in the facility permit the frequencies and locations for monitoring pursuant to this subsection after considering the degree of certainty associated with the expected or demonstrated correlation between values for monitoring parameters and values for the constituents of concern. The number of monitoring locations specified by the Department shall be determined based on an evaluation of the facility's groundwater monitoring system as a whole and the extent to which statistical validation is needed. Monitoring pursuant to this subsection shall be conducted at least every five years."

Comment Response: In response to this and other comments, section 66264.98(g) has been modified to allow the permit writer more

flexibility to specify which locations must be monitored for constituents of concern.

**Comment T32 - 66261.2(d)**

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests language changes for this section to make discarded commercial chemical products not wastes under stated circumstances.

See response to comment T13

**Comment T33 Section 66261.24 (a)**

Commentor - Joint Comments - see commentor index

Comment summary: The commentor states that the proposed regulations should be written so as not to subject RCRA-exempt wastes to the Toxicity Characteristic Leaching Procedure Test if and when it is adopted. The commentor proposed that a new subsection (d) be added to title 22, Cal. Code Regs., section 66262.14 as follows:

"(d) Notwithstanding any other provision of these regulations, the following wastes shall be considered to exhibit the characteristic of toxicity under subsection (a)(1) or (a)(2) of this section only if the waste meets the criteria set forth in those subsections as determined by the Waste Extraction Test Method specified in Article 11, Chapter 30 of Title 22 of the California Code of Regulations as constituted on June 23, 1989:

(1) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(2) Drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy."

Comment response: See response to Comment J-1 Section 66261.24 (a) (includes comment addressed to Section 66261.101).

**Comment T34, AI21, AD3, AM2, D7, F2, - Sections 66264.1,  
K2, X17 66265.1**

Commentor AI - California Manufacturers Association  
Commentor AD - Aerojet General  
Commentor AM - General Dynamics  
Commentor D - Los Angeles Department of Water and Power  
Commentor F - Douglas Aircraft Co  
Commentor K - General Dynamics Co  
Commentor T - Joint comments submitted by Kahl Associates

Commentor X - San Diego Gas and Electric

Comment summary: The proposed regulations should adopt the federal exemptions for totally enclosed treatment facilities, elementary neutralization units and wastewater treatment units.

Comment response: Proposed permitting and interim status requirements for facilities which treat, store, or dispose of hazardous waste are based on current Title 22 CCR regulations and Health and Safety Code statutes. The intent of RCRA authorization is not to repeal current regulations nor to adopt RCRA as such, but to adopt most stringent of these regulations. Adoption of EPA exemption for the facilities/units stated in the comment would make proposed regulations less stringent than the current State regulations. Therefore, your comment was not accommodated. We would, however, like to inform you that to address this issue for non-RCRA facilities, the Department is currently developing a permit streamlining program which will provide various regulatory options for certain categories of facilities/treatment processes.

Comment T35 - 66261.3

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests language to be added to this section stating the excavated contaminated soil is subject to the general self-certifying waste classification procedure as are other wastes.

Response to comment: This comment and other comments led the Department to reexamine existing and proposed mixture rules (rules for determining when mixtures of hazardous waste or hazardous materials mixed with other substances are hazardous wastes). The Department determined that materials such as the contaminated soil referred to by the commentor are, indeed, subject to the ordinary waste classification procedure. The Department has not used the suggested language, relying instead on the 40 CFR mixture rules to clarify the status of mixtures under the proposed rules. See response to comment T17 for further discussion of mixture rules.

Comment T36 - 66260.10, 66261.4

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests language for adopting the federal definition of "treatability study" and the federal treatability studies exemption from 40 CFR Section 261.4(e) and (f).

Response to comment: See response to comment T19

**Comment T37 - Section 66260.10**

Commentor T - Joint comments, see commentor index

Comment: "THE PROPOSED REGULATIONS SHOULD MAKE CLEAR THAT ON-SITE TRANSFER OF HAZARDOUS WASTE IS NOT COVERED BY THE REGULATIONS.

Modify the definitions of "Transfer" and "Transportation" in section 66260.10 as follows:

"Transfer" means the loading, unloading, pumping, or packaging of hazardous waste in connection with transportation.

"Transportation" means the movement of hazardous waste off-site by air, rail, highway or water."

Response to comment: The Department is partially accommodating this comment. However, the Department has not adopted the commentors suggested language for "transfer" because it feels that that language does not clearly satisfy the concern of the commentor. The Department is not altering, however, the definition of "transportation" because movement by air, rail, highway, or water must, by the definitions of "onsite" and "offsite", be transportation "offsite".

**Comment T38 - 66270.14(m) and (1)**

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests language deleting proposed Section 66270.14(m) and (1) through (1)(2).

Response to comment: See response to comment T21

**Comment T39 - 66264.4 and 66265.4**

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests language deleting Sections 66264.4 and 66265.4.

Response to comment: See response to Comment T22

**Comment T40 - 66264.314(a) and (c)**

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests adding language to this section excepting wastes mixed with absorbent from the liquid in landfills ban.

Response to comment: See response to Comment T23

**Comment T41 - 66261.3**

Commentor T - Joint comments, see commentor index

Comment summary: The commentor suggests additions and deletions from this section to allow automatic delisting of federally delisted wastes.

Response to comment: See response to Comment T24

**Comment T-42 - Sections 66262.52 and 66262.53**

Commentor T - Joint Comments

Comment:

"The proposed regulations inappropriately mandate EPA involvement in the exportation of non-RCRA hazardous waste.

Modify subsections (c) and (d) of section 66262.52 (General Requirements) as follows:

(c) For RCRA hazardous wastes, a copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by waste (bulk shipment)).

(d) For RCRA hazardous wastes, the hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent."

Modify subsection (a) of section 66262.53 (Notification of Intent to Export) as follows:

(a) A primary exporter of RCRA hazardous waste shall concurrently notify USEPA and send a copy of that notification to the Department of an intended export before such waste is scheduled to leave the United States. A complete notification shall be submitted (60) days before the initial shipment is intended to be shipped off site. This notification shall cover export activities extending over a twelve (12) month or lesser period. the notification shall be in writing, signed by the primary exporter, and include the following information:

Add subsection (g) to section 66262.53 as follows:

(g) A primary exporter of non-RCRA hazardous waste shall notify the Department of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted four weeks before the initial shipment is intended to be shipped off-site. This notification shall cover export activities extending over a twelve (12) month or lesser period. The notification shall be in writing, signed by the primary exporter, and include the information required by sections 66262.53 (a)(1) and (2).

Conforming changes should also be made to sections 66262.54(d), (g)(1), (h) and (i), 66262.55, 66262.56 (a) and 66262.57 (a)(2).

Response: Except for minor, consistency-related changes to the commentor's suggested language of his proposed Section 66262.53 (g), this language has been added as new subsection 66262.53 (b). Because of this inserted text, formatting changes have re-lettered the subsequent subsections. The subject portion of the remaining subsections have been changed to accommodate this comment.

Comment U1 - Chapter 14, Article 6

Commentor U - Environmental Coalition

Comment: "In areas where the private sector, with its attendant profit motive, controls dump operation, this presents an even greater problem than where dumps are publicly controlled. Where a private owner has a monopolistic advantage, this threat is even greater. In Ventura County, where Waste Management Incorporated is expected to have a monopoly on dump operation in less than five years, any code wording that increases the operator's self-regulatory powers is worrisome. We need more, not less public control over both water quality monitoring and response programs."

Comment response: The Department does not agree that the proposed regulations rely upon "self regulation". It is possible that the commentor was confused by the description of the proposed interim status regulations as a "self-implementing" version of the requirements for permitted facilities. The Department must continue to rely upon self-implementing regulations for interim status facilities until permits are issued for those facilities. Under the proposed regulations, the owner or operator is required, with or without Departmental oversight, to design and implement water quality monitoring programs that will satisfy the requirements in the regulations. Failure to do so constitutes noncompliance with the regulation. It is the Department's intention to review all water quality sampling and analysis plans and to require modifications as necessary to protect human health and the environment. Failure of the Department to perform this function does not, however, relieve the owner or operator of the responsibility to provide appropriate water quality monitoring.

It is also possible that the intention of these comment is to recommend that the Department assume responsibility for designing and implementing monitoring programs at all hazardous waste disposal facilities. The Department does not have either the personnel or the funding to perform such a monumental task. Further, the Department is not convinced that such a dramatic change is warranted. The proposed regulations require that the owner or operator design, propose, and implement a water quality monitoring program that is submitted to the Department for approval. The Department may modify the monitoring program as necessary to protect human health and the environment. It is the intention of the Department to continue to provide oversight, surveillance and enforcement of the regulations and the conditions in the permit.

Comment V0a - Monitoring Requirements

Commentor V - Citizens to Preserve the Ojai

Comment: "We know Class I landfills leak and violate the law. There has been 100% failure in the past. The whole self monitoring

structure of the regulations has no basis for relying on it. Why aren't regulations being proposed that are an improvement on the self monitoring structure?"

Comment response: It is not clear what is meant in this comment by "self monitoring". It is possible that the commentor was confused by the description of the proposed interim status regulations as a "self-implementing" version of the requirements for permitted facilities. The Department must continue to rely upon self-implementing regulations for interim status facilities until permits are issued for those facilities. Under the proposed regulations, the owner or operator is required, with or without Departmental oversight, to design and implement water quality monitoring programs that will satisfy the requirements in the regulations. Failure to do so constitutes noncompliance with the regulation. It is the Department's intention to review all water quality sampling and analysis plans and to require modifications as necessary to protect human health and the environment. Failure of the Department to perform this function does not, however, relieve the owner or operator of the responsibility to provide appropriate water quality monitoring.

It is also possible that the intention of these comment is to recommend that the Department assume responsibility for designing and implementing monitoring programs at all hazardous waste disposal facilities. The Department does not have either the personnel or the funding to perform such a monumental task. Further, the Department is not convinced that such a dramatic change is warranted. The proposed regulations require that the owner or operator design, propose, and implement a water quality monitoring program that is submitted to the Department for approval. The Department may modify the monitoring program as necessary to protect human health and the environment. It is the intention of the Department to continue to provide oversight, surveillance and enforcement of the regulations and the conditions in the permit.

#### **Comment V0b - Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "What is the relationship of these regulations in relationship to Proposition 65? Will the adoption of these regulations preempt Proposition 65 requirements? Will the compounds and classes of compounds that will fall under the discharge provision of Proposition 65 in the future be required to be monitored by the proposed regulations?"

Comment response : There is no direct relationship between Proposition 65 (chapter 6.6 of division 20 of the Health and Safety Code) and the regulations proposed in this rulemaking. The regulations proposed in this rulemaking will not preempt Proposition 65 requirements. It is possible that a compound or

class of compounds that falls under the discharge provisions of Proposition 65 will be monitored under a program established pursuant to the proposed regulations. If a material is being managed in a regulated unit, and that material is subject to the discharge provisions of Proposition 65, then it is very likely that the material will be a constituent of concern for purposes of the groundwater monitoring requirements in proposed Chapters 14 and 15. It is also possible that toxicological determinations made by the Science Advisory Board for Proposition 65 could result in new chemicals or compounds being classified as hazardous wastes pursuant to the Department's waste classification regulations. This rulemaking, however, is being undertaken to implement chapter 6.5 of division 20 of the Health and Safety Code and not chapter 6.6 of division 20 of the Health and Safety Code.

#### **Comment V0c - Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "Has the Toxic Pits Cleanup Act of 1984 been incorporated fully into these regulations?"

Comment response: The proposed regulations do not specifically incorporate the Toxic Pits Cleanup Act of 1984. However, several of the proposed regulations in Chapter 18 have been drafted to be consistent with the prohibitions and restrictions in the Toxic Pits Cleanup Act of 1984. Specifically, [note to Margie: Please see Watson Gin for references to specific regulations in proposed chapter 18 which have been reconciled with the Toxic Pits Cleanup Act].

#### **Comment V1 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "Water quality monitoring data collected in accordance with this article , including actual values [of] constituents and parameter, shall be maintained in the facility operating record. The regional board shall specify in the waste discharge requirements when the data shall be submitted for review.

We recommend the Board add to this requirement that current water quality monitoring data shall also be maintained in the closest public library to the facility for ease of public review."

Because the Department of Health Services offices are far away from many facilities we believe that the public library would be conducive for quiet, unhampered review of records. Offices are only open during week days during business hours and not on weekends and evenings when most volunteers have time to examine records. Requiring the public to review records in the offices of

the facilities (some of which are on site of waste management units) is not conducive for public review of records. If the need arrives to copy information, no public copy machine is available at facilities for this function. It would also be a burden on the facilities employees to require that they make copies of requested data. We have heard citizens make this request of the Board and believe it would be reasonable to include this requirement in the proposed regulations, at this time.

Perhaps a notice in the local newspaper could be required to be published when new data becomes available at the library."

Comment response: This comment was directed to the State Water Quality Control Board. However, the Department understands the problem posed by the commentor with respect to difficulties experienced in reviewing Department records during weekdays. The Department commits that in instances where citizens provide the Department with a request in advance, the Department will make records available after business hours on weekdays or on a weekend, if necessary to assure that members of the public have access to Department records. The Department will not, however, place a notice in the newspaper when new data is submitted to the Department.

#### **Comment V2a - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "The discharger shall establish a background for each monitoring parameter and for each constituent of concern pursuant.

What is to prohibit a discharger from establishing a high background value?"

Comment response: Section 66264.97(e)(6) requires that the owner or operator collect all data necessary for the selection of an appropriate statistical method and to establish background values for each constituent of concern. All data must be submitted to the Department for review. The Department will review the proposed methods and background values, and will specify appropriate background values in the facility permit.

#### **Comment V2b - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "The discharger shall collect and analyze all data necessary to assess the nature and extent of any release from the waste management unit. This assessment shall include a determination of the spatial distribution and concentration of each constituent of concern throughout the zone of contamination or

pollution. The discharger shall complete this assessment according to a schedule.

It says that the discharger shall collect and analyze all data necessary. Why are there only two items mentioned (1. determination of the spatial distribution and 2. concentration of each constituent of concern)? Why is it left up to the discharger to determine what information, type, intensity, time period etc. shall be used? How does one know how to determine the spatial distribution if you don't have more extensive and tighter regulations in place?"

Comment response: The Department does not believe that it is wise to include specific data requirements that may or may not be universally appropriate for all regulated units. Instead a new requirement has been added, section 66264.98(k)(7), that requires the owner or operator to submit to the Department "... 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." This affords both the Department and the public (through the permitting process) the opportunity to review assessments plans prior to implementation.

### **Comment V3 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "Evaluation monitoring program - The discharger shall maintain a record (of) water quality analytical data as measured and in a form necessary for the evaluation of changes in water quality due to a release from the waste management unit.

See above comment about locating records in a public place."

Comment response: This comment was directed to the State Water Quality Control Board. However, the Department understands the problem posed by the commentor with respect to difficulties experienced in reviewing Department records during weekdays. The Department commits that in instances where citizens provide the Department with a request in advance, the Department will make records available after business hours on weekdays or on a weekend. if necessary to assure that members of the public have access to Department records. The Department will not, however, place a notice in the newspaper when new data is submitted to the Department.

### **Comment V4 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "The discharger shall analyze samples "at least annually to determine whether additional hazardous constituents are present and, if so, at what concentrations (s). Is this often enough to protect our water?"

Comment response: This comment refers to an existing requirement to perform annual sampling for Appendix IX constituents during evaluation monitoring. This is only one of several minimum monitoring requirements for evaluation monitoring. The permit writer has complete flexibility to choose an appropriate sampling frequency for all monitoring parameters and for all constituents of concern. This requirement does not interfere with the ability of the Department to require all data necessary to protect human health and the environment.

#### **Comment V5 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "Why does it take three months for a discharger to submit an amended report of waste discharge? Can this be done in a shorter time period?"

Comment response: When statistically significant evidence of a release is discovered, the owner or operator must immediately sample all monitoring points for all Appendix IX constituents and for all constituents of concern. This data must be collected, analyzed, and utilized in the design of the evaluation monitoring program. The Department believes that 90 days is a reasonable period of time for the successful completion of these responsibilities. (Note: The Department may require interim corrective action measures whenever necessary to protect human health or the environment.)

#### **Comment V6 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "Under the corrective action program is sampling and analysis for all constituents of concern (after terminating corrective action) for one year adequate?"

Comment response: After successful completion of corrective action, the owner or operator must remain in a corrective action program for one year to verify that corrective action was successful. After that period of time, the owner or operator must re-institute a detection monitoring program to monitor for future or continued releases. This is necessary so that the appropriate response requirements found in section 66265.98 are applicable to the regulated unit if another release is detected. Monitoring under this program must continue throughout the compliance period.

**Comment V7 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "Is there a definition for 'is not likely'? Should this have stricter wording?"

Comment response: The requirement in proposed section 66264.100(i)(2) was originally adapted from a similar requirement in existing title 22. Upon reflection, this provision has been entirely eliminated because, as noted in this comment, the language is ambiguous and because the Department does not wish to allow an owner or operator to remain in a corrective action program longer than necessary to perform and verify corrective action. After successful completion of a corrective action program, the owner or operator must reinstitute a detection monitoring program so that the appropriate requirements for response to a subsequent release apply.

**Comment V8 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "When the discharger is required to report to the regional board. within seven days of analysis, why isn't a certified letter, return receipt required?"

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

**Comment V9 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "What CEQA review will be done? Have these regulations been sent out to responsible agencies for review and comment? Are you going to answer in writing all oral and written comments?"

Comment response: The Department has prepared an initial study and a negative declaration which address the changes proposed in this rulemaking. These documents were circulated for public comment from [date] to [date]. No substantive comments were received. Both documents have been made part of the rulemaking file. In addition, the Department provided a copy of the original version of the proposed regulations to all of the agencies specified in Health and Safety Code section 25150(f). The Department has provided a written response in the final statement of reasons to all oral and written comments provided to the Department concerning the proposed regulations.

**Comment V10 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "If regulations call for protection of the environment but allowing that degradation is inevitable, and discharge permitting is not required to do CEQA review, how can the public know it is being protected? How can the environmental consequences be fully addressed when the Department of Health Services can get to override considerations without going through CEQA?"

Comment response: The Department disagrees with the commentor's premise that degradation of the environment is an inevitable consequence of the proposed regulations. With respect to the commentor's references regarding CEQA, as noted above, the Department has prepared a negative declaration in response to the requirements of CEQA. In addition, the Department has held workshops prior to commencing this rulemaking and has responded to the public comments received during the official public comment periods associated with the adoption of these regulations.

**Comment V11 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "Under each of the proposed monitoring programs (Detection, Evaluation, and Corrective Action), there are new minimum requirements imposed on dischargers for sampling at monitoring locations. Monitoring will be required on a semi-annual basis instead of a quarterly basis."

Comment response: Under the proposed regulations, monitoring must be done at a frequency specified in the permit. For groundwater, this frequency is specified considering the ground water flow rate. Sampling may be required more frequently than semi-annually if the Department determines that more frequent sampling is necessary to protect human health and the environment.

**Comment V12 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "If the proposed regulations provide for a reduction in the amounts of constituents of concern being examined and half the amount of sampling will be done as noted in the above paragraph, then this would be a relaxation of the current standards. Six months could go by before a discharge is found. 'Where there is a reasonable possibility that a project or activity may have a significant effect of the environment, an exemption is improper.' (CEQA Guidelines section 15308)"

Comment response: The Department disagrees with the commentor's assertion that the proposed regulations constitute a relaxation of the Department's current groundwater monitoring standards. The Department's proposed requirement that monitoring occur every six months is consistent with 40 CFR section 66264.97. In addition, the proposed regulations require that the Department specify more frequent sampling when necessary to protect human health and the environment. The Department is not asserting an exemption from CEQA, nor has the Department identified any reasonable possibility that the groundwater monitoring standards in these regulations may have a significant negative effect on the environment.

### **Comment V13 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "Have feasible alternatives and mitigations been examined which would substantially lessen any significant adverse impact which the activity may have on the environment? If so, where are the alternatives and mitigations discussed? Are the regulations being adopted implementing the alternative with the least "adverse effect" on the environment?"

Comment response: The comment assumes that a significant adverse impact has been identified. As discussed elsewhere in the final statement of reasons for these regulations, and in the initial study and negative declaration for these regulations prepared by the Department, no significant adverse impact has been identified. The proposed regulations are being adopted based on the Department's determination that the groundwater monitoring standards in chapters 14 and 15 protect human health and the environment.

### **Comment V14 - General Monitoring Requirements**

Commentor V - Citizens to Preserve the Ojai

Comment: "We are concerned with the implementation of the regulations. The completed memorandum of agreement, or memorandum of understanding between the Department of Health Services and the State Water Resources Control Board used to implement the regulations, should be available for review and comment before the adoption of new regulations. When will this be available and will comments on it be allowed and answered in writing?"

Comment response: The Department has a memorandum of agreement with the State Water Resources Control Board regarding the implementation of the hazardous waste management responsibilities bestowed by the Legislature on both agencies. This document is several years old and is available upon request. Any of the provisions included in this document are available for comment by the public. However, it should be noted, that the memorandum of

agreement is not part of this rulemaking and comments on it will not be accepted or answered as part of this rulemaking.

#### Comment V15 - General Monitoring Requirements

Commentor V - Citizens to Preserve the Ojai

Comment: " Will you be holding another public meeting in Los Angeles to solve problems brought to your attention with regard to these regulations?"

Comment response: The Department has had two public comment periods following the public meeting held in Los Angeles to accept additional comments on these regulations. No subsequent public hearings were held.

#### Comment W1 Section 66261.24

Commentor - PPG Industries Inc.

Comment summary: "California proposes to retain toxicological testing as an aspect of the toxicity characteristic. In addition, California proposes that waste extract testing continue to be done in accordance with the Waste Extraction Test (WET). PPG believes California should reconsider whether to retain these features in its regulatory program.

Toxicological tests are impractical and costly, particularly with respect to wastes of varying composition that are generated on a batch basis. In addition, California's mandated use of the WET is unique among the states in which PPG has operations.

It is anticipated that the US EPA will be redefining its toxicity characteristic within the next few months by adding a number of organic constituents. PPG believes EPA's anticipated rule, which will require use of the Toxicity Characteristic Leaching Procedure (TCLP), will provide an equivalent level of protection to that offered by California's current toxicity characteristic. At the same time, the federal test has the advantage of generally uniform applicability and acceptance across the country. Finally, the difference between California's characteristic and that in other states will lead to potentially inconsistent results and duplicative effort for wastes being shipped outside California. For these reasons, PPG recommends that California revise its toxicity characteristic to conform to the federal standard."

Comment response: The Department explained on pages 58-76 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 the justification for requiring toxicological

testing as an aspect of the toxicity characteristic. To conform with the current level of stringency in regulation, toxicological testing cannot be eliminated.

Acute oral or dermal LD<sub>50</sub>s for numerous chemicals are available from published sources such as NIOSH "Registry of Toxic Effects of Chemical Substances", Sax's "Dangerous Properties of Industrial Materials", "Patty's Industrial Hygiene and Toxicology", or Verschuieren's "Handbook of Environmental Data on Organic Chemicals". Toxicity and hazard information for numerous chemicals are available from information retrieval systems such as offered through Medlars, Toxnet, or Dialog. There is flexibility within the regulations to allow a generator to calculate the acute oral or dermal LD<sub>50</sub> of a waste mixture as set forth in title 22, Cal. Code Regs., section 66261.24 (c) provided the generator has knowledge of the weight percent of each component in the waste mixture and the respective acute oral or dermal LD<sub>50</sub> of each component. The Department disagrees that the difference between California's characteristic and that in other states will lead to potentially inconsistent results and duplicative effort for wastes being shipped outside California. Because the commentor is recommending that California revise its toxicity characteristic to conform to the federal standard, the Department interprets that to mean that the other states referred to are also enforcing the federal standard. With this in mind, if a waste is classified according to the more stringent California standards and is determined to be nonhazardous, then it would be considered nonhazardous in the other states as well. On the contrary, if a waste is determined to be hazardous according to a California hazardous waste standard only, then it may still be considered nonhazardous in the other states. The intent of the regulations as proposed is to establish one set of regulations which conforms to the current level of stringency in State and federal law and to identify those wastes which are determined to be RCRA hazardous waste and those which are non-RCRA hazardous waste.

A response to the comment concerning the use of the Toxicity Characteristic Leaching Procedure is addressed in Comment J-1 section 66261.24 (a) (includes comment addressed to section 66261.101). If the Toxicity Characteristic Leaching Procedure is determined to be more stringent than the Waste Extraction Test through a separate rulemaking package, the Department will modify the toxicity characteristic regulations. No change is proposed based upon this comment.

**Comment W2 - Section 66261.4**

Commentor W - PPG Industries

Comment: "Waste exclusions. The federal regulations contain a number of exclusions that are not being proposed for incorporation into California's program. PPG believes a number of these could be incorporated into the California program with no decrease in the

level of environmental protection. For example, the exclusions for industrial wastewater mixtures are based on the fact that another regulatory program (Clean Water Act) provides the basis for controls. The exclusions for closed loop recycling and for product or raw material storage tanks, transport vehicles or vessels, pipelines and manufacturing process units are intended to exclude non-waste management activities from coverage by the regulations. When the materials become wastes, i.e., when removed from their respective units, they are fully regulated. The sample exclusions (for characteristic/composition and for treatability studies) require the use of adequate safeguards to protect against improper management, e.g., compliance with DOT or U.S. Postal shipping requirements and proper packaging."

PPG recommends that consistent with the federal program, California adopt the exclusions contained in 40 CFR, para. 261.4, or alternatively, that it adopt those specific exclusions described in this comment."

Response to comment: The exemptions found in section 66261.4 are those that the Department's statutory and regulatory examination showed to be found in existing State law. Because the existing regulations specifically exempt certain materials from regulation, the Department determined that materials not specifically exempted from regulation in State law are subject to regulation irrespective of federal law. The Department recognizes that the EPA adopted these exemptions after careful deliberation and public comment. However, existing State law applies more stringent criteria than federal law to the identification of which wastes are hazardous. While these exempted materials might conceivably qualify for exemption under State criteria, 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 is adopting several of the exemptions and exclusions recommended by the commentor. Those adopted include the industrial waste water discharge exclusion (proposed section 66261.4(a)(1)), the exclusion for wastes in process and product storage tanks, pipelines, etc. (proposed section 66261.4(c)), and the samples exclusion (proposed section 66261.4(d)). The Department is not adopting the closed loop recycling exemption because this exemption is included in the broader in scope exemptions found in State law (Health and Safety Code, section 25143.2) for recycled hazardous wastes. The treatability studies exemption is not being adopted for the reasons given above. For further discussion of the treatability studies exemption, see the response to comment P1.

Commentor W - PPG Industries

Synopsis of comment: Lab certification. In contrast to the requirements of the federal regulations, California proposes to retain its laboratory certification provisions. This presents a substantial burden for entities that rely upon out of state laboratories and which intend to ship their wastes outside California. PPG recommends that California delete these requirements from the final rule.

Response to comment: The Department cannot accommodate this comment. Health and Safety Code section 25198.2. requires that "The analysis of any material required by this chapter shall be performed by a laboratory accredited by the department pursuant to Chapter 7.5...". Thus, the laboratory certification regulations of Chapter 44 are necessary to carry out that mandate.

In addition, with stated exceptions, major changes in the regulatory approach of existing law are not within the scope of this rulemaking. These regulations resulted from careful regulatory analysis to combine the existing aggregate stringency and broadness in scope based on modification of the federal regulations.

#### Comment W4

Commentor W - PPG Industries Inc.

Comment summary: "Recycling Units. PPG [i.e., PPG Industries Inc.] recommends that California adopt the federal permitting exemption for recycling units; PPG is currently withdrawing its hazardous waste storage [facility] permit in order to operate as a 90-day Generator [sic]. PPG would need to re-apply for a permit if an onsite recycling unit would be installed in the future to minimize offsite hazardous waste shipments."

Comment response: The Department cannot accommodate this comment for two reasons. First, a major change like the commentor recommended, other than the changes described in the "Statement of Reasons" for the proposed regulations, is outside the scope of this rulemaking. Second, the proposed regulations are not required to be identical to corresponding federal regulations and may be broader in scope or more stringent than those federal regulations, as they are in this case. However, the following paragraphs attempt to clarify some aspects of existing state and federal laws and/or regulations as they would possibly apply to PPG's situation.

The commentor's recommendation that California adopt the federal permit exemption for "recycling units" presumably means that the commentor would like the Department to adopt 40 CFR section 261.6(c) which exempts the recycling process itself from most federal (including permit) regulations, as specified. As emphasized above, such a change is not possible at this time.

However, the commentor stated that PPG would have to re-apply for a permit if the company decides to install an onsite recycling facility sometime in the future. This statement is not necessarily correct. Existing state law offers at least two exemptions from Department regulation for facilities that recycle and use their hazardous wastes onsite: Health and Safety Code section 25143.2(c)(2) provides a federally equivalent, conditional permit exemption for facilities that recycle and use their hazardous wastes onsite within 90 days of generating them; and Health and Safety Code section 25143.2(d)(1) provides a conditional exemption from hazardous waste control regulation altogether for facilities that recycle and use their non-RCRA hazardous wastes onsite. Both of these exemptions exist, provided (among other limitations) that they do not accumulate the wastes speculatively, as specified in Health and Safety Code section 25143.2(e)(4). These exemptions would not apply if the recycled wastes are not used onsite, but instead are sold or distributed for offsite use by others, however. Thus, state law provides some relief from permit requirements for onsite "recycling units", contrary to the commentor's implication that it does not.

**Comment X1 - Section 66260.10**

Commentor: San Diego Gas and Electric

Comment: "The proposed definition of 'Regulated Unit' is: 'surface impoundment, waste pile, land treatment unit or landfill that received or will receive hazardous waste.' The corresponding federal regulation has a date in it which is tied to the definition (has received waste after July 26, 1982). The Statement of Reasons (SOR) states that this date has been deleted from the definition for consistency with subchapter 15 of the Water Code, which already has jurisdiction over regulated units regardless of the date that the waste is received.

SDG&E's reading of subchapter in regards to it's applicability to (waste management) units that were closed, abandoned, or inactive on the effective date of these regulations (October 1984) is that while the requirements of article 5 may be imposed, it is a discretionary applicability.

It is SDG&E's suggestion that for purposes of this proposed definition, the discretion that is currently part of subchapter 15 be retained as it would allow the time and resources involved with a corrective action program to be focused on units where some water quality impairment is or has been found."

Comment response: These comments correctly identified an error in the proposed regulations. Section 66264.90(a) has been modified to make the applicability of these monitoring requirements at permitted facilities discretionary for units that have not received hazardous waste since July 26, 1982. For consistency with federal regulations, at interim status facilities monitoring is required

for units that have received hazardous waste since November 19, 1980.

**Comment X2 - Section 66262.3(c)(2)B**

Commentor X - San Diego Gas and Electric Co.

Comment: "Adds to the existing regulation, for purposes of determining whether a waste generated from the treatment, storage, or disposal of hazardous waste is hazardous, the words "which has not been in direct contact with hazardous waste" when referring to precipitation runoff. The SOR states that this language has been added to meet federal requirements (which it would without the addition) and to conform with the State's existing mixture rule (section 66300(a)).

The issue that SDG&E sees with this language is in defining "direct contact". Is this concept limited to rainwater runoff being in contact with the contents (hazardous waste) of a drum (spilled or otherwise exposed), or would it include a situation whereby a historic spill is walked through by an employee, and that employee then walks through an adjacent parking lot in the rain?

Unless provided the option of testing this runoff to determine whether it is hazardous (which is also necessary), SDG&E believes that a clearer understanding of what circumstances and conditions meet the definition of "direct contact" is essential."

Response to comment: The Department feels that the phrase "in direct contact" is quite clear and means exactly what the dictionary definition of the terms implies. Rainwater is in direct contact with a hazardous waste if it contacts it! In the scenario's the commentor mentioned, the rainwater is indeed a candidate to be a hazardous waste. In the first scenario, water being in contact with the contents of a drum of hazardous waste, the runoff is hazardous waste if application of the mixture rules in section 66261.3 yields that conclusion. In the second case, if the material adhering to the employee's shoes is hazardous waste by application of the same regulation, the rainwater runoff from the lot could be hazardous waste if it is classified as hazardous waste by application of the same regulation.

Note, however, that the Department is changing the mixture rules found in section 66261.3 to conform correctly to the mixture rules existing in State and federal law. The mixtures of hazardous wastes and rainwater would be subject to testing against the characteristics of a hazardous waste to see if they are hazardous waste.

**Comment X3 - Section 66264.90**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66264.90 establishes the applicability of water quality monitoring and response programs for permitted facilities. It states that these regulations apply to owners or operators of facilities that treat, store, or dispose of hazardous waste. This would require a surface impoundment, waste pile, land treatment unit or landfill that receives or has received hazardous waste shall comply with the requirements of this article for purposes of detecting, characterizing, and responding to releases from regulated units.

SDG&E's comments on this section echo our first comment. Currently subchapter 15 allows the SWRCB some discretion in determining which units that received waste prior to subchapter 15's adoption will be required to implement a water quality monitoring and response program. This proposed section would eliminate that discretion, and require all units to implement this type of program at great cost and for little or no environmental protection. It is our belief that this discretion be retained in the regulations."

Comment response: These comments correctly identified an error in the proposed regulations. Section 66264.90(a) has been modified to make the applicability of these monitoring requirements at permitted facilities discretionary for units that have not received hazardous waste since July 26, 1982. For consistency with federal regulations, at interim status facilities monitoring is required for units that have received hazardous waste since November 19, 1980.

**Comment X4 - Section 66264.90(b)(1)**

Commentor: San Diego Gas and Electric

Comment: "Section 66264.90(b)(1) states that the requirements of the water quality monitoring and response program do not apply if "all waste, waste residues, contaminated containment system components, contaminated ground water, contaminated subsoils, and all other contaminated materials are removed or decontaminated at closure". The SOR states that these additions ("contaminated ground water" and "all other contaminated materials") are necessary because existing regulations require that all contaminated material be removed from any unit in order to obtain a clean closure.

In reviewing the existing regulations, we failed to find the requirement that all contamination be removed from any unit for clean closure. In fact, the language in section 66264.90(b) would be identical to the federal language (264.90(c)) and existing state language (67180(e)) if it were not for these additions. This additional language troubles us as it would not only make obtaining clean closures more difficult, it raises questions of what concentration of a material is contamination, and is the owner or operator of a unit responsible for all the contaminated ground

water under a regulated unit when it can be demonstrated that contaminants did not originate from the owner or operators unit? It is for these reasons that SDG&E believes that the regulatory language above should not include the contaminated ground water" and "other material" language."

Comment response: In response to this and other comments, this section has been rewritten to aid clarity and to re-establish the original requirement from existing Subchapter 15 that the owner or operator must monitor during the post-closure care period unless all contaminated "geologic material" is removed or decontaminated at closure.

**Comment X5 - Section 66264.91(a)(3)**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66264.91(a)(3) - Requires the owner/operator of a unit to institute "evaluation monitoring" whenever there is significant physical evidence of a release. Significant physical evidence of a release includes (among other things) unexplained stress in biological communities.

SDG&E is uncertain how this would be implemented as a triggering mechanism for the institution of an evaluation monitoring program. Would any 'unexplained biological stress' near a facility trigger an evaluation monitoring program, or does this stress need to be in some proximity to the regulated unit? How much time does an owner or operator of a unit have to try and 'explain' an instance of biological stress before they must institute an evaluation monitoring program. We believe that this provision will be difficult to implement without some greater clarity, and as such, should be deleted or rewritten to provide direction as to how it should be used."

Comment response: The requirements in sections 66264.91(a)(3) and 66265.91(a)(3) were added to the proposed regulations to emphasize the requirement implied in 40 CFR section 264.98 that the owner or operator must respond appropriately whenever the owner or operator determines that the water quality monitoring system is not functioning properly (i.e., has not provided an early indication of a release from the regulated unit, or is not capable of doing so). Although no comments questioned the wisdom of such a requirement, several comments expressed concern that the requirement, as written, was too vague. In response, these subsections have been modified to clearly limit the responsibility of an owner or operator to respond to significant physical evidence of a release to those occurrences that could reasonably be expected to be the result of a release from the regulated unit. Subsections 66264.98(1) and 66265.98(m) have also been rewritten to describe the responsibility of the owner or operator to notify the Department within 7 days of determining that there is significant physical evidence of a release, and submit an application for a

permit modification (or amended water quality sampling and analysis plan) within 90 days of such determination.

**Comment X6 - Section 66264.94(c)(3)**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66264.94(c)(3) - states that the Department may establish a concentration limit for a constituent of concern that is greater than the background value of that constituent if, among other things the Department finds that the proposed concentration limit is the lowest concentration that is technologically or economically available.

SDG&E has been unable to find any criteria that would assist the Department in making this decision, particularly as it relates to what is 'economically' available. We believe that criteria such as these are necessary guide an owner or operator in their preparation of alternative (above background) concentration limits."

Comment response: (Note: For the sake of clarity, the section referenced by this comment has been modified, moved and renumbered as section 66264.94(e)(2).) Existing state regulations require that the owner or operator achieve concentration limits that have been established at background values. The proposed regulations have been modified to provide additional guidance for the owner or operator when cleanup to background values is not technically or economically achievable. The owner or operator must submit an engineering feasibility study with an analysis of alternative corrective action measures. If the feasibility study demonstrates that cleanup to background is not feasible, the Department may only approve the use of concentration limits greater than background if the owner or operator demonstrates that there will be no adverse impact on the environment. This is the overriding criteria and must be satisfied for every constituent of concern.

The purpose of this subsection is to require that, in all cases, owners or operators perform corrective action to best of their ability. This subsection will provide guidance for a permit writer when choosing between two methods that are both economically feasible.

**Comment X7 - Section 66264.94(c)(5)**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66264.94 (c)(5) - Mandates that for the purposes of evaluating the risk (pursuant to subsection (c)(4) of this section) to any biological receptor, the point of exposure shall be at the point of compliance. The SOR states that this is because, 'In the experience of the Department, the predictions of

the migration potential for waste constituents has not proven reliable'.

What the SOR fails to mention is that the State Water Resources Control Board has a policy defining point of application, which was adopted after numerous workshops and hearings . This SWRCB policy differs from this proposal and is a more indicative of real world conditions. While the SWRCB policy begins with a similar position, (all water quality objectives should be met at the point of discharge) it has in it the flexibility to allow the regional boards to allow specific pollutants to be discharged in excess of water quality objectives if the regional board finds that assimilative capacity for those specific pollutants exists in the aquifer.

We believe that this proposed section should be amended in such a manner so as to incorporate the flexibility found in the SWRCB policy."

Comment response: The requirement to evaluate risk as if exposure would occur at the point of compliance is consistent with the federal guidance document for establishing alternate concentration limits. State Board staff have informed us that there is no such "point of application" policy for ground water. To date, attempts to generate such a policy have failed. The regulations have not been changed as a result of this comment.

**Comment X8 - Section 66264.97(d)(5)**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66264.97 (d)(5) - Allows the Department to grant a variance to unsaturated zone monitoring at a regulated unit 'if the owner or operator demonstrates to the satisfaction of the Department that no method for unsaturated zone monitoring can provide any indication of a release from that regulated unit'.

Existing regulation (subchapter 15 - section 2559) requires unsaturated zone monitoring when feasible. This is a much different standard than that which is proposed, and the proposed language lacks any justification for the change .

SDG&E believes that DOHS should retain (adopt) the 'feasible' language that is already in regulation."

Comment response: The Department agrees that, for existing regulated units, the feasibility of installing unsaturated zone monitoring equipment must be considered in the design of the monitoring program. Language has been added to these sections that allows this consideration. However, for a new regulated unit, the Department will require that the owner or operator conduct unsaturated zone monitoring whenever a method of unsaturated zone

monitoring is appropriate for the hydrogeologic conditions at the site.

**Comment X9 - Section 66264.100(c)**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66264.100(c) - Requires that an owner or operator implement a corrective action program that ensures that constituents of concern achieve their respective concentration limits at all monitoring points by removing the waste constituents or treating them in place. To accomplish this, the owner or operator shall take other action specified by the Department, including source control.

SDG&E is concerned that this language does not allow consideration of local conditions when approving a corrective action program. Also this language targets the hazardous constituents coming from each and every unit, but it does not concern itself with potential public exposures, nor does it provide the flexibility to consider any treatment options for groundwater already requiring some other treatment prior to any beneficial use. This language also offers up source control as a means of preventing releases without any comment in the SOR as to it's justification.

SDG&E would hope that this language could be reworded to provide greater flexibility in developing a strategy to prevent releases, and mitigate their impact."

Comment response: The section addressed by this comment has been modified to require that the owner or operator implement corrective action measures that ensure that constituents of concern achieve their respective concentration limits throughout the zone of contamination. Local conditions, existing water quality, and the risk of public exposure are considered in the establishment of concentration limits for a corrective action program. (See section 66264.94.) The requirement to "take other action specified by the Department..." was adapted from a similar requirement in existing title 22, section 67190(e). The phrase "including, but not limited to, source control" was added for the sake of clarity and has now been addressed in the statement of reasons.

**Comment X10 - Section 66264.100(h)**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 662464.100(h) - Adds to the other requirements of this article a provision that the Department may require the owner or operator to remove or treat in place an amount of waste or waste constituent which the Department determines to be

equal to the amount of waste or waste constituents released to the environment from the unit.

SDG&E believes that including a Departmental goal (to permanently contain or treat all hazardous waste constituents) in these regulations may not be appropriate. To require an owner or operator to take responsibility (and liability) for waste or waste constituents that do not come from their unit 'in exchange' for waste or waste constituents that cannot be feasibly removed is wrong. This proposal could potentially make the owner or operator of a unit that is down gradient from other facilities or units society's designated waste removal firm. SDG&E believes this section should be deleted."

Comment response: Many comments were received about the meaning of this requirement. In retrospect, the Department agrees that the enforcement of this requirement may not be possible at this time. Since this is not an existing requirement under state or federal regulations, the Department has decided to delete this section from the proposed regulations.

#### **Comment X11 - Section 66265.90**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66265.90 Establishes the applicability of water quality monitoring and response requirements for interim status facilities. It states that these regulations apply to owners or operators facilities that treat, store, or dispose of hazardous waste. This would require that a surface impoundment, waste pile, land treatment unit or landfill that receives or has received hazardous waste shall comply with the requirements of this article for purpose of detecting, characterizing and responding to releases from regulated units.

Existing regulations apply to units that received waste after the effective date of the regulations. Existing subchapter 15 requires monitoring at units that received waste prior to the operative date of the regulations only upon a specific request by a RWQCB where a threat to groundwater is suspected.

SDG&E believes that this proposed regulation should be re-written to mirror the existing level of regulatory control, as a means of providing continuity for existing operations."

Comment response: This comment correctly identified an error in the proposed regulation. Section 66265.90(a) has been modified to make the applicability of the monitoring requirements discretionary for units that have not received hazardous waste since the effective date of the federal interim status monitoring regulations, November 19, 1980.

**Comment X12 - Section 66265.91(a)(3)**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66265.91(a)(3) - Requires the owner or operator of a unit under interim status to implement evaluation monitoring whenever there is significant physical evidence of a release from the regulated unit. Significant physical evidence of a release includes (among other things) unexplained stress in biological communities.

SDG&E is uncertain how this would be implemented as a triggering mechanism for the institution of an evaluation monitoring program. Would any unexplained biological stress" near a facility trigger an evaluation monitoring program, or does this stress need to be in some proximity to the regulated unit? How much time does an owner or operator of a regulated unit have to try and 'explain' an instance of biological stress before they must institute an evaluation monitoring program. We believe that this provision will be difficult to implement without some greater clarity, and as such, should be deleted or rewritten to provide direction as to how it should be used."

Comment response: The requirements in sections 66264.91(a)(3) and 66265.91(a)(3) were added to the proposed regulations to emphasize the requirement implied in 40 CFR section 264.98 that the owner or operator must respond appropriately whenever the owner or operator determines that the water quality monitoring system is not functioning properly (i.e., has not provided an early indication of a release from the regulated unit, or is not capable of doing so). Although no comments questioned the wisdom of such a requirement, several comments expressed concern that the requirement, as written, was too vague. In response, these subsections have been modified to clearly limit the responsibility of an owner or operator to respond to significant physical evidence of a release to those occurrences that could reasonably be expected to be the result of a release from the regulated unit. Subsections 66264.98(1) and 66265.98(m) have also been rewritten to describe the responsibility of the owner or operator to notify the Department within 7 days of determining that there is significant physical evidence of a release, and submit an application for a permit modification (or amended water quality sampling and analysis plan) within 90 days of such determination.

**Comment X13 - Section 66265.97(d)(5)**

Commentor: San Diego Gas and Electric

Comment: "Proposed section 66265.97(d)(5) - Allows the Department to grant a variance to unsaturated zone monitoring at the regulated unit at an interim status facility and regulated unit if the owner or operator can demonstrate to the satisfaction of the Department

that no method for unsaturated zone monitoring can provide any indication of a release from a regulated unit.

Existing regulation (subchapter 15 - section 2559) requires unsaturated zone monitoring when feasible. This is a much different standard than that which is proposed and the proposed language lacks any justification for the change .

SDG&E believes that DOHS should retain (adopt) the 'feasible' language that is already in regulation."

Comment response: The Department agrees that, for existing regulated units, the feasibility of installing unsaturated zone monitoring equipment must be considered in the design of the monitoring program. Language has been added to these sections that allows this consideration. However, for a new regulated unit, the Department will require that the owner or operator conduct unsaturated zone monitoring whenever a method of unsaturated zone monitoring is appropriate for the hydrogeologic conditions at the site.

**Comment X14 - Section 66265.310 (a) (1), via 66265.128 (a) (2)**

Commentor - San Diego Gas and Electric Co.

Comment summary: The commentor feels that the proposed change in closure requirements for interim status facilities from minimizing, to preventing, the downward entry of water into a closed landfill unit should not be made.

Comment response: This comment has been accommodated by deleting the word "prevention", and returning to the federal language which uses the term "minimize".

**Comment X15 - Section 66270.14(m)**

Commentor - San Diego Gas and Electric Co.

Comment summary: Requires (except as provided) all hazardous waste facility permit applicants to submit with their Part B, a quantitative risk assessment. The Department may waive this requirement if, based upon evidence provided by the applicant, they believe that public health, wildlife, domestic livestock and the environment could not be significantly adversely affected by migration of constituents of hazardous waste from the facility. The rationale for this new requirement, as presented in the SOR, is that the Department needs it to protect human health and the environment.

To SDG&E, this additional requirement of a quantitative risk assessment seems to be an unduly burdensome requirement for many of

the simple facility permit applications that the Department receives annually. We do not believe that the permit applicant (for most storage and many treatment facilities) should be placed in the position of either preparing (or paying a consultant to prepare) a quantitative risk assessment or the evidence that would persuade the Department not to require the risk assessment. To our way of thinking, the regulations for a permitted facility would minimize risk to an acceptable level, negating the end for a risk assessment.

SDG&E believes that this section should be rewritten so as to grant the Department the ability to request a quantitative risk assessment after reviewing the permit application. This would reduce the amount of work being generated as part of this permit application process, while at the same time allowing the Department to focus it's [sic] attention on the permit applications that deserve it.

Comment response: See response to comment T21.

**Comment X16 Section 66261.33 (c)**

Commentor - San Diego Gas and Electric

Comment summary: "These proposed regulations do not include language that corresponds to the specific language in 40 CFR Section 261.33 (c) exempting "empty" chemical containers that are intended for beneficial reuse from hazardous waste regulation. (Beneficial reuse in this case being the container would be used to hold the same commercial chemical product that it previously held.) The omission of this language is not supported by the references provided in the SOR, nor is it supportable from a public policy perspective when one considers the alternative management option. "Empty" drums would be sent back to the original supplier, with a manifest, hauled by a registered hazardous waste hauler and chemical distributors would be required to be fully permitted as a treatment and storage facility. It is unlikely that the above option would ever take place as drums could not be returned to the chemical suppliers because of the administrative and financial costs to everyone involved. Instead, these drums would be sent off for treatment or disposal. The commentor recommends that the Department retain the original language and comment from 40 CFR 261.33 (c). [Proposed section 66261.33 (c)]"

Comment response: The comment in federal regulation in 40 CFR section 261.33 (c) is not considered to be regulatory in nature, but rather, it is considered to be explanatory. Therefore, the Department did not incorporate the comment in 40 CFR section 261.33 (c). The Department disagrees that omission of this language is not supported by the references in the Initial Statement of Reasons. In so much as the Department decided at the time of preparing the Initial Statement of Reasons not to incorporate 40 CFR section 261.7 into State regulation, the Department considered

it appropriate to omit the comment. The Department has since decided to incorporate contaminated container regulations as set forth in title 22, Cal. Code Regs., section 66261.7. Notwithstanding incorporation of the contaminated container regulations, the beneficial reuse of emptied containers to hold the same commercial chemical product that they previously held is regulated according to statute, specifically Health and Safety Code section 25143.2 (d)(6). Adoption of the comment in 40 CFR section 261.33 (c) is not necessary. The modification is rejected.

**Comment X17 - Sections 66264.1 and 66265.1**

Commentor - San Diego Gas and Electric

Comment Summary: These proposed regulations (proposed section [sic] 66264.1 and 66265.1) do not include, as does RCRA, an exemption from permitting requirements for wastewater treatment units that discharge pursuant to an NPDES permit. This exemption is very narrowly written, applying only to tank systems that are part of the wastewater system necessary for compliance with an NPDES permit. These units, as determined by EPA, do not pose a significant enough risk to require a permit or to even be regulated by a permit by rule.

SDG&E agrees with the determination that no further regulation of these units is necessary for reasons of protecting human health or the environment and we recommend inclusion of the federal exemption in the proposed regulations.

Comment response: See response to comment T34

**Comment: Y1 - Section 66740.6(b)**

Commentor Y - IBM

Comment: "This letter is to address a comment to section 67440.6(b) of the proposed revisions to title 22 of the California Code of Regulations:

Section 67440.6(b) specifies the minimum qualifications of persons "performing the analysis of hazardous waste". We believe this section is unclear as to whether the term "equivalent" means that a person must have a "degree" that is at least equivalent to a "baccalaureate", or some other type of technical training which would be equivalent to the degree. We think the latter is the correct interpretation as we think it would be unrealistic of the Department to expect that only degreed persons be allowed to perform the analysis of hazardous waste. A technically trained and qualified person working under the supervision or direction of the "supervisor" or "director" of a certified laboratory should be

viewed as possessing the necessary qualifications to perform the analytical procedure.

We offer the following amended language to section 67440.6(b) to make the suggested clarification:

(b) The person performing the analysis of hazardous waste shall possess a baccalaureate or higher degree in chemistry, biochemistry, biology, or a natural or physical science from an accredited institution of higher learning, or equivalent technical training; and work under the direction or supervision of the person(s) specified in subsection (a) of this section."

Response to comment: The Department is not accommodating this comment. The term "or equivalent" as applied to the term "baccalaureate" has a recognized meaning to personnel managers. This term encompasses the universe of other educational and job experience factors which can substitute for the baccalaureate degree including factors such as those mentioned by the commentor and any other factors which would indicate satisfactory preparation for waste analysis. Some of the other possible factors might include military training, lifetime job experience, and non-degreed study or research in analyzing hazardous waste. Because the list factors which could be considered equivalent is open-ended, it is impossible to create an exclusive list, any list of equivalency factors the Department creates will leave an ambiguity. The Department has decided to leave the regulated community some flexibility as to what constitutes "equivalent".

**Comment Z1 - Section 66270.14 (b) (19)**

Commentor Z - The BNC Group

Comment Z1.1: In proposed regulations the provisions on Part B permit applications essentially relates statutory law and directs that the applicant shall provide any "additional information as required by the Department," but fails to identify the Department's requirements.

Response: Section 66270.14 of chapter 20 of the proposed regulations describes some generic information and requirements which needs to be submitted as Part B of the permit application. Since facility operation and treatment methods differ with the type of facility, a facility and treatment specific information required in Part B may not be possible to be describe in the regulatory package. Subsection (b) (19) which requires such an information has been incorporated in the proposed regulations and has been taken directly from the existing title 22, California Code of Regulations (section 66391 (a) (19)). Please note that the Department has put together various facility specific guidance documents on preparing Part B applications. These documents describe facility specific information which in most part address

information required pursuant to section 66270.14 (b) (19). The "additional information" required pursuant to this referenced section is also discussed by the permit writer with the facility staff during their meetings at various occasions in the permitting process.

Comment Z1.2: The proposed regulations appear to lack requisite clarity and it fails to adequately address the necessity for the Department's information requirements in as much as it seems to be so all encompassing as to require submission of any information that the Department might ask for, for whatever reason.

Response: This comment has been adequately addressed in the response to comment Z1.1 above.

Comment Z1.3: No criteria is set forth, or referenced, for the Department's determination on what is necessary to evaluate the application. What are the Department's requirements? How are they established, on a formal or ad-hoc basis? Are there limits; can they be found in regulations? Where? How will the information be used? For what purpose? Has the necessity for the department's requiring the information been established? In other words, the regulation leaves unsettled how the department's information determination will be made.

Response: Based on the explanation provided in the response to comment Z1.1 above on the variability of treatment and technology from one facility type to another facility type, it is not possible to establish regulations specific to the questions raised in this comment. However, most of these questions are addressed during permitting process of the facility. Specific required information is requested by the Department during its review of the facility treatment/technology on a case-by-case basis.

Comment Z1.4: The regulated community is unable to anticipate the Department's needs and therefore cannot make an informed decision as to what material must be supplied to meet the department's requirements. The applicant therefore would not be able to submit a completed application - until after the department makes a determination as to what information must be included.

Response: Please refer to responses to comments Z1.1 and Z1.3 above.

Comment Z1.5: The proposed regulation should be clarified to specify the information that will be required by the department upon submission of the Part B of a permit application. If the department cannot at this time outline the criteria that will be used, it is suggested that the provisions of paragraph (19) of subdivision (b) of section 66270.14 be deleted.

Response: This comment was not accommodated. For details please refer to responses to comments above.

**Comment AB1 - Section 66270**

Commentor AB - Pillsbury, Madison & Sutro

Comment summary: The commentor has asserted that the application of the new regulations to pending permit applications is unclear. The commentor feels that application of new regulations towards the review of pending applications will be burdensome, expensive, without any benefit in protecting public health and the environment, and would lead to ineffective management on part of the Department. The commentor therefore requests that pending applications that are currently undergoing review should be "grandfathered" in under the old regulations.

Comment response: Permit applications that are pending at the time the new regulations become effective will be reviewed against the new regulations. The Department cannot accommodate this comment for following reasons. First, Health and Safety Code section 25200 authorizes the Department to issue permits if the Department determines that an applicant's facility meets the standards and requirements adopted by the Department. Consequently, the Department does not have legal authority to issue a permit to an application which does not correspond to the most up-to-date regulations. Hypothetically, the Department could retain two sets of regulations; however, that approach would give rise to the second reason we cannot accommodate the comment.

The Department initiated this rulemaking to make California's hazardous waste regulations at least as stringent as federal hazardous waste regulations so that the federal Environmental Protection Agency can grant California authorization to implement the federal RCRA Subtitle C program. California cannot implement the federal program with respect to existing permit applications and process those applications under the existing regulations. Operation pursuant to the new regulations is a condition precedent to receiving and retaining authorization to implement the federal program. Consequently, the suggested approach is inconsistent with the Department's mandate to obtain authorization.

It is unfortunate that pending permit applications may need to be amended or supplemented after the effective date of the new regulations. However, the Department's permitting staff will be trained on the content of the new regulations before they become effective. This advance training will allow staff to work with permit applicants to smooth the transition.

**Comment AC1**

Commentor AC - California Air Resources Board

Comment: "Section 66264.704(c)(1) of the proposed revisions to title 22 states that, "The concentration limit... in open-air immediately downwind...[s]hall not exceed an applicable maximum allowable concentration established by the Air Resources Board;"

The Air Resources Board (ARB) does not establish maximum allowable concentrations. We have established ambient air quality standards (AAQSS) for criteria air pollutants such as NOx and SOx and also for vinyl chloride. Accordingly, we recommend that this section be revised to reference air quality standards established by ARB."

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

**Comment AC2 Section 66261.24 (a)(2)(B)**

Commentor - California Air Resources Board

Comment summary: "Table III of section 66261.24 (a)(2)(B) lists 2,3,7,8-TCDD as the only isomer of dioxin that is an organic persistent and bioaccumulative toxic substance. However, the ARB has identified 14 different isomers of dioxins and furans as toxic air contaminants and carcinogens. These isomers have been found to be present in bottom ash and fly ash from incinerators burning a variety of wastes. These isomers can associate with fugitive emissions from improper handling and bioaccumulate upon introduction into groundwater. In order to prevent fugitive emissions of all 15 identified dioxins and furans, we recommend that title 22 be amended to identify the 14 additional isomers of dioxins and furans identified in the attachment to this letter."

Comment response: The commentor's request to adopt 14 additional isomer of dioxins and furans to Table III of section 66261.24 (a)(2)(B) is outside the scope of this rulemaking package. There are 75 different isomers of dioxin and 135 different isomers of furan with varying degrees of toxicity. 2,3,7,8-TCDD is generally recognized as one of the more toxic, if not the most toxic, isomer. The commentor stated that "(i)n order to prevent fugitive emissions of all 15 identified dioxins and furans, we recommend that title 22 be amended to identify the 14 additional isomers of dioxins and furans...". The Department disagrees that adoption of regulatory thresholds for the additional isomers would prevent fugitive emissions. Rather, if what is of concern is the authority to regulate these other isomers as hazardous wastes, there are other provisions in regulations which would govern that. According to current title 22, Cal. Code Regs., section 66696 (a)(1) or (a)(6) and proposed title 22, Cal. Code Regs., section 66261.24 (a)(3) or (a)(8), a waste would be hazardous and subject to regulation if it has an acute oral LD50 of less than 5000 milligrams per kilogram or if it has been shown through experience or testing to pose a hazard to human health or environment because of its carcinogenicity,

acute toxicity, chronic toxicity, bioaccumulative properties or persistence in the environment. Also, if a waste was determined by the Department to meet the statutory definition of a hazardous waste set forth in Health and Safety Code section 25117, it would be subject to regulation. There is adequate authority to regulate wastes containing the commentor's constituents of concern. The modification is rejected.

**Comment AD1 - Section 66261.3 (a)(2)(C)**

Commentor - Aerojet General Co.

Comment summary: "Currently, the generator is allowed to make the decision as to whether wastes can be considered hazardous. Although it may be prudent for generators to document in their files the reasons for their decisions to consider particular non-RCRA wastes non-hazardous, no demonstration is currently required to be submitted to or approved by the Department before the waste is managed as non-hazardous." The commentor recommends that generators continue to be allowed to make the determination as to whether their wastes meet the criteria for "hazardous" or "extremely hazardous" designation.

Comment response: See response to Comment D-6 section 66261.3 (a)(2)(C) (includes comment addressed to section 66262.11 (b)).

**Comment: AD2 - 66261.7**

Commentor AD - Aerojet General

Comment: "Empty Containers"

The proposed regulations do not address the important issue of recycling empty containers. Proposed section 66266.2(b) lists unrinsed empty containers as recyclable materials. Currently, DHS has not issued permits to any drum recycling or reconditioning facility in California to manage hazardous waste. Since 1983, DHS has maintained a policy of delaying enforcement of permitting and manifesting requirements until a final decision is made on how to regulate drum recycling. DHS is currently encouraging generators to use unpermitted drum recycling and reconditioning facilities, based on policy letters rather than specific statutory or regulatory language. Generators who do not wish to accept the potential liability of relying on policies which are not supported by regulation must send otherwise recyclable containers to Class 1 disposal. Aerojet recommends that DHS incorporate regulations into title 22 to expressly allow generators to return unrinsed chemical containers to a supplier for refilling and to send drums federally defined as "empty" to recycling facilities.

We understand that DHS has recently completed a study of drum recycling and is considering issuing permits to recycles who meet existing title 22 requirements, following public workshops in September-October 1989. If hazardous waste treatment permits are required for empty drum recycles currently exempted under RCRA, the cost of recycling will increase, many recycles will choose to go out of business, and recycling will be discouraged in California."

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 Department will not adopt regulations governing drum recyclers in this rulemaking. As the commentor pointed out, the Department is involved in a multi-year study of the drum recycling industry and will soon commence rulemaking on this topic. Because the purpose of this rulemaking is merely to restate current State and federal hazardous waste regulations to satisfy the mandate of Health and Safety Code section 25159.5 to gain authorization, the Department will not adopt regulations addressing the new area of drum recycling in this rulemaking. However, the Department is adopting container classification regulations to clarify the existing waste classification regulations which the Department agrees were unacceptably vague on classification of contaminated containers.

#### **Comment AD3 - Totally Enclosed Treatment Systems**

Commentor - Pamela A. Wee, Manager  
Environmental Science

Comment Summary: Totally enclosed treatment units/facilities, as defined in 40 CFR 260.10, are currently excluded from regulation as hazardous waste units/facilities under RCRA in 40 CFR 264.1(g)(5) and 265.1(c)(9). These units/facilities are not specifically excluded by current title 22 regulations, section 66300. A variance or hazardous waste treatment facility permit must be obtained. Totally enclosed treatment presents a minimal risk to human health or the environment, and DHS will generally grant variances for this type of treatment. However, the long waiting period and expense incurred in applying for a variance discourages generators from considering on-site, totally enclosed treatment, which is generally more protective of human health and the environment than off-site transport of untreated wastes. Aerojet recommends that DHS adopt the exclusion of totally enclosed treatment systems from hazardous waste facility permitting

requirements currently contained in the RCRA regulations. If DHS determines that a treatment unit/facility operating under this exemption does not meet the "totally enclosed" criteria, DHS can exercise its enforcement authority as appropriate.

Comment AD4 - Transfer

Commentor - Pamela A. Wee  
Environmental Science

Comment AD4 - Proposed section 66260.10 contains a very broad definition of "transfer" including "the loading, unloading, pumping, or packaging of hazardous waste." We recognize that this language comes from the existing definition of "transfer station" under section 66212 of title 22. We understand that DHS intends to regulate off-site hazardous waste transfer facilities, where hazardous waste may be unloaded, repackaged, consolidated, and reloaded in the course of shipment to an offsite treatment or disposal facility. We do not believe that the Department is intending to regulate loading docks, or the act of pumping waste from a less-than-90-day storage tank into a transport vehicle, at the generating facility for the purpose of shipping the waste to an off-site treatment, storage or disposal facility. Otherwise, virtually all generator sites would become hazardous waste transfer facilities, including small retail businesses. We also do not believe that DHS intends to require manifesting for on-site transport of wastes. These issues need to be clarified in defining "transfer".

Comment response: See response to comment T20

Comment AD5 - Section 66261.2(b)(4)

Commentor AD - Aerojet General

Synopsis of comment: Under proposed section 66261.2(b)(4), a hazardous material in use or in storage for future use at an industrial facility would be considered a "discarded material", and become "waste" if it is "mislabeled" or "not adequately labeled", unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled. We recognize that the proposed language is taken directly from existing Health and Safety Code section 25124(b)(4). However, the Department has not developed implementing regulations defining what is meant by "mislabeled" or "not adequately labeled" for hazardous materials. Labeling standards for various types of hazardous substances have been developed by other state and federal agencies, such as OSHA and the Food and Drug Administration. It is not clear what standards DHS intends to enforce. DHS needs to define "mislabeled" and "not

adequately labeled". If new, substantial requirements are intended, a separate rulemaking may be needed.

Comment response: The comment agrees that this provision may not be adequately conditioned to determine which types of mislabeling, etc., make a material a waste. In response to this and to other comments, the Department is adding a new subsection to this section which states:

"(f) A material is a waste if it poses a threat to human health or the environment because it meets either, or both, of the following conditions:"

This statement is then followed by proposed subsections (b)(4) and (b)(5). The Department cannot list all variations on mislabeled containers and cannot give criteria referring to other agencies regulations without research. The addition of this statement clarifies that any mislabeling or inadequate packaging must pose a threat to human health or the environment to be classified as waste. This addition gives criteria to judge which mislabelings would cause a material to be classified as waste. Thus, merely printing "8 Ounces" on a 12 ounce container poses no hazard; whereas labeling a bottle of insecticide as "Coca Cola" would pose a hazard.

Labeling standards adopted by other agencies tend to serve the purposes of that agency. Many of these requirements are not applicable to this provision. Drugs and pesticides are labeled with use directions, warning statements, company names, and registration and manufacturing establishment identification numbers. A mislabeling in the context of another agencies rules may not pose a hazard; for instance, omission of the EPA registration number for the manufacturing plant producing the insecticide referred to above would be a violation of federal and State pesticide labeling laws, but would not pose a hazard. Thus, the Department has elected not to cite other agencies regulations in this provision.

**Comment AE1 - Section 66262.32 (b)**

Commentor AE - Safety-Kleen Corporation

Comment summary: The commentor proposes a language change to this subsection which sets forth the requirement for a generator of hazardous waste (HW) to mark the HW containers with specific language that states the containers contain hazardous waste and that if found to notify the proper authorities.

Comment response: Changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking.

**Comment AE2 - Sections 66264.147(a) and 66265.147(a)**

Commentor AE - Safety Kleen Corporation

Comment summary: This commentor recommends changing these sections to read:

\$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of defense costs.

Comment response: This comment will not be accommodated as this regulatory language is more strict than the federal, and currently exists in title 22, California Code of Regulations, section 67027. 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.

Additionally, one of the Department's missions is to protect the environment and public health. Therefore, the Department does not feel that the per facility requirement is unreasonable, as it ensures that funds will be available in the event of an accident at more than one facility (for the same owner or operator) in the same year.

**Comment AE3 - Section 66271.2 (c) (1)**

Commentor AE - Safety Kleen Corporation

Comment: "We like the idea of having 60 days for the Department to review a permit application for completeness. Previously there had not been any time constraints put on the Department. We have had many permit applications sit at the regional offices for years before review takes place. We hope this will remedy the situation."

Comment response: The Department is glad to hear it. Thanks.

**Comment: AF1 - 66261.7**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Empty Drum Management Practices

The joint comments express our concerns that the proposed regulations do not address current empty drum management practices and propose the addition of a new section 66261.7 to the final regulations in order to bring California's regulation into conformity with current practice and federal requirements. We suggest as part of this new section that a provision be included to

specify that empty containers with less than 1 inch of material, other than that subject to 40 CFR section 261.7(b)(3), that are sent to a facility authorized by the department, need not be managed by the generator of the empty container as a hazardous waste nor transported as such.

This provision would conform to current practice and represents a limited modification of the language suggested by the joint comments by which unrinsed containers may be returned to the supplier. The same supporting rationale would apply. Adopting such an approach would support continued recycling of these containers in lieu of land disposal."

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 commentor's suggested language is not being adopted. The Department is adopting container classification regulations which reflect its understanding of existing State law as concerns classification of contaminated containers with the exception that the Department is allowing rinsing and nonhazardous management for only small contaminated containers. Existing law (section 66796(b)(7)) declares that unrinsed iron and steel containers are "recyclable hazardous waste types". Because some of these containers, specifically drums, are economically and technically feasible to recycle and are declared to be recyclable hazardous wastes by existing law, the Department will not declare these containers to be nonhazardous.

**Comment AF2 - Section 66264.90(b)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Section 66264.90(b) seems to say that a facility may not be clean closed if there is contaminated groundwater. If that meaning is what was intended, it may be impossible to ever clean close a facility if groundwater is already impacted. Current state and federal regulations require that all waste, waste residues, contaminated containments system components and contaminated subsoils must be removed or decontaminated in order to obtain clean closure. This additional requirement that groundwater be decontaminated far exceeds what is now necessary to assure clean closure. Is it the intent of this requirement to delay clean

closure and the transfer of real estate for 20 or more years if groundwater has not yet been fully decontaminated?"

Comment response: This section has been rewritten to aid clarity and to re-establish the original requirement from existing Subchapter 15 that the owner or operator must monitor during the post-closure care period unless all contaminated "geologic material" is removed or decontaminated at closure.

**Comment AF3 - Section 66264.100(h)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Section 66264.100(h) says that an owner operator may be required to remove or treat an amount of waste equivalent to that released to the environment. It is unclear how this concept would be applied. Does this mean that an operator is responsible for cleaning up an equivalent amount of someone else's waste? How is this liability to be determined and apportioned? Why is this provision needed? In our discussions of the membership this proposed change raised more questions than it resolved."

Comment response: Several comments were received about the meaning of this requirement. In retrospect, the Department agrees that the enforcement of this requirement may not be possible at this time. Since this is not an existing requirement under state or federal regulations, the Department has decided to delete this section from the proposed regulations.

**Comment AF4 - Section 66260.10 (b), Identification Number Definition**

Commentor AF - California Council for Economic and Environmental Balance

Comment summary: The commentor states that the Identification (ID) Number definition in the proposed regulations is more stringent than current state and federal regulations and asks why.

Comment response: The commentor does not explain why he or she concluded that the proposed definition of Identification number is more stringent than the current one. The Department disagrees with the commentor's conclusion. Current and proposed state regulations are broad in scope and more stringent than federal regulations. They set forth that any person generating hazardous waste shall comply with the generator requirements which require the generator to obtain an ID number. The Department and the Environmental Protection Agency (EPA) both assign ID numbers to handlers of hazardous waste depending on the type and amount of hazardous waste handled in a calendar month.

**Comment: AF5a - Section 66260.10**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "'Non-RCRA Hazardous waste'

Who makes the determination

A waste is presumed to be regulated pursuant to RCRA, unless it is demonstrated to DOHS that the hazardous waste is non-RCRA hazardous waste

A hazardous waste is presumed to be regulated pursuant to RCRA, unless it is determined, pursuant to regulations adopted by DOHS, that the hazardous waste is a non-RCRA hazardous waste until then generator makes determination"

Response to comment: The Department feels that this commentor, along with several others, is commenting that the proposed definition of "non-RCRA hazardous waste" (paraphrased in the second paragraph of the comment) differs from the statutory definition of "non-RCRA hazardous waste" by requiring a demonstration that a waste is not regulated under RCRA. The Department is accommodating this comment by replacing the proposed regulatory definition with the more current statutory definition. The latter definition requires a determination in place of a demonstration affirming the self-certifying nature of the waste classification regulations.

For a more complete discussion of the issue of self-certification, see the response to comment M11.

**Comment AF5b - Section 66260.10**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "'Point of Exposure' - new term"

Comment response: This comment identifies the definition of "point of exposure" as a new term. For the sake of clarity, those sections using the term "point of exposure" have been rewritten, and the definition has been deleted from the proposed regulations.

**Comment AF6 - Section 66264.90(a)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Regulated unit. Date contained in CFR, July 26, 1982, is deleted. SOR says all units covered already by Subchapter 15, only portions of Subchapter 15 applied to units that were inactive then."

Comment response: These comments correctly identified an error in the proposed regulations. Section 66264.90(a) has been modified to make the applicability of the monitoring requirements for units at permitted facilities discretionary for units that have not received hazardous waste since July 26, 1982.

**Comment: AF7 - 66261.1(b)(2)(A)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "questions raised concerning self-certification"

Response to comment: The Department feels that the comment means that the reference to the statutory definition of "hazardous waste" in the above section makes self-certification difficult or impossible. This comment has also been made by other commentors. In response, the Department is limiting application of this statutory definition in 66261.1(b)(2)(A) to the Department in cases where the Department needs the ability to sample or inspect material it feels may be hazardous waste. The Department agrees that the statutory definition is too vague to be generally applied by the regulated community in the waste classification process. The Department is changing this provision and several others which raise questions about the ability of generators to self-classify their wastes.

For further discussion of this point, see the response to comments I1 and N4. For further discussion of self-certification, see comment T1.

**Comment: AF8 - 66261.3(a)(2)(C)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Presumption of hazardousness by appearing on the App X list questions self certification"

Response to comment: Commentors pointed out several places where the proposed regulations violate the current philosophy of self certification for waste classification. The specific instances wherein the Department is requiring a "demonstration" or a variance to manage a delisted waste as hazardous are being addressed in other comments. The Department is replying to this comment in such a way as to affirm the self-certification provisions of existing

law. The regulations are being altered to allow self-certification of a waste listed in Appendix X to chapter 11. Thus, the word "determine" has been substituted for the word "demonstrate" in section 66261.3(a)(2)(C).

**Comment: AF9 - 66261.3(c)(2)**

Commentor AF - California Council for Economic and Environmental Balance

Synopsis of comment: "Rainwater runoff - Hazardous Waste?"

Response to comment: The Department has examined this provision in light of this cryptic comment. Precipitation runoff which has been in contact with hazardous waste is declared not to be a hazardous waste under the federal system. Under existing State law, there is no similar exclusion; therefore, the Department has concluded that this runoff is a waste and can be classified as a hazardous waste if it meets the State's existing waste classification criteria. The provision as proposed was silent on both the application of the characteristics and lists and on the category of hazardous waste that the runoff would fit into. Applying the "derived from" rule found in this subsection would classify runoff from listed wastes as RCRA hazardous wastes even though these wastes are RCRA exempt. Thus, the proposed provision on precipitation runoff is being deleted and a new provision added to the end of this subsection declaring that this runoff is a non-RCRA hazardous waste if it exhibits a characteristic. This provision recognizes the status of this material under current State law.

**Comment: AF10 - Section 66261.4**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Deletion of exemption [40 CFR 261.4(a)(8)] for reclaimed secondary materials that are returned to the original production process"

Response to comment: The Department has examined this deletion in light of this cryptic comment. The exemptions contained in 40 CFR section 261.4 are mostly not matched by exemptions in current State law. Many of the materials exempted by the 40 CFR provision referred to are exempted by the "onsite recycling" exemptions in Health and Safety Code section 25143.2. This existing State law governs when recycled materials are waste and thus can be hazardous waste. It does not follow the format and content of this federal exemption. The Department will therefore not accommodate this comment and will continue to refer the regulated community to the Statutory exemptions from regulation found in existing California law.

The status of these materials is addressed directly in section 66261.101(b)(3) where they are declared to be non-RCRA hazardous waste. However, the introductory language, section 66261.101(b), conditions the classification as non-RCRA hazardous waste to only those of these materials which meet a characteristic of a hazardous waste.

**Comment:** AF11 - 66261.7

Commentor AF - California Council for Economic and Environmental Balance

**Comment:** "Deletion of exemption [40 CFR 261.7] for empty hazardous waste containers - consistent w/current State law"

**Response to comment:** The Department agrees with the commentor that deletion of that 40 CFR section is consistent with the text of current law. The Department is, however, adopting contaminated container regulations to clarify classification of contaminated containers. For a provision-by-provision explanation of these regulations, see the Statement of Reasons section addressing proposed section 66261.7.

**Comment AF12 Section 66261.24 (a)(6)**

Commentor - California Council on Economic and Environmental Balance

**Comment summary:** "If it has a specified acute aquatic 96-hour LC50 procedures for bioassay."

**Comment response:** The fish bioassay test referenced in proposed title 22, Cal. Code Regs., section 66261.24 (a)(6) is a method developed by the Water Pollution Control Laboratory of the California Department of Fish and Game. The basic protocol is derived from the method in Part 800 of the "Standard Methods for the Examination of Water and Wastewater", while the Department of Fish and Game procedure, "Static Acute Bioassay Procedures for Hazardous Waste Samples", was developed to describe special sample preparation and procedures to use specifically for hazardous waste samples. Private sector commercial laboratories have been certified for bioassay testing using the basic test procedures provided in Part 800 of the "Standard Methods for the Examination of Water and Wastewater" supplemented by the Department of Fish and Game's procedure since the inception of the laboratory certification program in 1986. For clarification, the Department modified the language in regulation to correctly reflect that the bioassay must be performed according to procedures described in Part 800 of the "Standard Methods for the Examination of Water and Wastewater" and the "Static Acute Bioassay Procedures for Hazardous Waste Samples" developed by the Department of Fish and Game.

**Comment AF13 Section 66261.33 (c)**

Commentor - California Council for Economic and Environmental Balance

Comment summary: "Empty containers vis-a-vis legitimate reuse and the Federal exclusion - could prevent."

Comment response: The Department interprets the commentor's comment to proposed title 22, Cal. Code Regs., section 66261.33 (c) to mean that the legitimate reuse of empty containers could be prevented by regulation without specific language to allow for it. The Department disagrees. The comment in federal regulation in 40 CFR section 261.33 (c) is not considered by the Department to be regulatory in nature, but rather, it is considered explanatory. Therefore, the Department did not incorporate the comment in 40 CFR section 261.33 (c) into proposed title 22, Cal. Code Regs., section 66261.33 (c). The Department's interpretation of the legitimate or beneficial reuse of emptied containers is addressed in the statute as explained in the response to Comment X-16 section 66261.33 (c). The Department is partially accommodating this comment by incorporating contaminated container regulations as set forth in title 22, Cal. Code Regs., section 66261.7.

**Comment AF14 Section 66261.101 (b)(1)**

Commentor - California Council for Economic and Environmental Balance

Comment summary: "Commercial chemical products that are applied to land."

Comment response: The Department interprets the commentor's comment to mean that commercial chemical products applied to land should not be regulated as non-RCRA hazardous waste. Commercial chemical products listed in 40 CFR section 261.33 are regulated if they are either discarded, off specification, container residues or spill residues, and therefore, considered wastes. Although in 40 CFR section 261.2 (c)(1)(ii), commercial chemical products listed in 40 CFR section 261.33 are not considered solid wastes if they are applied to the land and that is their ordinary manner of use, the State does not recognize a similar exclusion. According to the State regulations, if commercial chemical products listed in title 22, Cal. Code Regs., section 66261.33 are applied to land they are considered recyclable materials and are subject to regulation in accordance with Health and Safety Code section 25143.2. Health and Safety Code section 25143.2 (e)(1) which states that materials used in a manner constituting disposal, or used to produce products that are applied to the land including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance are not eligible for the

exemptions provided in subsections (b) through (d) of Health and Safety Code section 25143.2.

Commercial chemical products which are not wastes and are applied to land in their ordinary manner of use are not considered non-RCRA hazardous wastes. The Department has modified title 22, Cal. Code Regs., section 66261.2 (d)(1)(B) in response to Comment M-7 section 66261.2 (d)(1) and (d)(2) to clarify that retrograde materials and surplus materials are not wastes except as provided in Health and Safety Code section 25120.5.

**Comment AF15 Section 66261.101 (b)(4)**

Commentor - California Council for Economic and Environmental Balance

Comment summary: "If it is a container or inner liner from a container which is empty. 66300 (e)(5) triple rinse for pesticide containers. 66300 (g) empty household HM and pesticide containers of one gallon or less."

Comment response: The Department interprets the commentor's comment to mean that regulating containers or inner liners from containers which are empty as non-RCRA hazardous waste goes beyond the current regulations in light of the exemptions in title 22, Cal. Code Regs., section 66300 (e)(5) and title 22, Cal. Code Regs., section 66300 (g). Although these current exemptions were carried over into the proposed regulations, the Department clarified the exemptions and accommodated this comment by incorporating contaminated container regulations as set forth in title 22, Cal. Code Regs., section 66261.7. If a container or inner liner 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 or inner liner would be considered non-RCRA hazardous waste unless it meets the exemptions pursuant to title 22, Cal. Code Regs., section 66300 (e)(5) which has been renumbered to title 22, Cal. Code Regs., section 66262.70 or title 22, Cal. Code Regs., section 66300 (g) which has been renumbered to title 22, Cal. Code Regs., section 66261.7 (b). If a container or inner liner meets the conditions set forth in title 22, Cal. Code Regs., section 66261.7, the container or inner liner would be considered nonhazardous waste.

**Comment AF16 - 264.1(g)(6)**

Commentor AF - California Council on Economic and Environmental Balance

Comment: "II-14-4

Not proposed exemption for elementary neutralization and wastewater treatment"

Response to comment: See response to comment T34

**Comment AF18 - Section 66264.25**

Commentor AF - California Council on Economic and Environmental Balance

Comment summary: This comment seems to refer to the fact that the Department proposes to change certain design standards from a requirement to withstand a "maximum credible earthquake" to a requirement to withstand a "maximum probable earthquake."

Response: The Department agrees that the proposed regulation would change the design standards, and thus, the Department has accommodated this comment by revising the proposed regulation so that it retains the standard requirement to withstand a "maximum credible earthquake" which is in existing title 22 California Code of Regulations.

**Comment AF19 - Section 66264.90**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Applicability of this article to regulated units. Groundwater monitoring - all sites/inactive. Deletion of exemptions. All regulated units in California will be required to conduct groundwater monitoring."

Comment response: This comment correctly identifies an error in the proposed regulations. Sections 66264.90(a) and 66265.90(a) have been modified to make the applicability of these monitoring requirements for units at permitted facilities discretionary for units that have not received hazardous waste since July 26, 1982.

This comment also correctly identified the deletion of the exemptions from ground water monitoring for regulated units. This deletion is consistent with existing Subchapter 15 except that a redundant exemption in Subchapter 15 for land treatment units that have clean closed has been omitted from the proposed regulations because all regulated units that clean close are exempt from ground water monitoring during the post-closure care period.

**Comment AF20 - Section 66264.90(b)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Clean closures. Groundwater contamination - no clean closure."

Comment response: This section has been rewritten to aid clarity and to re-establish the original requirement from existing subchapter 15 that the owner or operator must monitor during the post-closure care period unless all contaminated "geologic material" is removed or decontaminated at closure.

**Comment AF21 - Section 66264.91(a)(3)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Triggers monitoring whenever there is significant physical evidence of a release."

Comment response: The requirements in sections 66264.91(a)(3) and 66265.91(a)(3) were added to the proposed regulations to emphasize the requirement implied in 40 CFR section 264.98 that the owner or operator must respond appropriately whenever the owner or operator determines that the water quality monitoring system is not functioning properly (i.e., has not provided an early indication of a release from the regulated unit, or is not capable of doing so). Although no comments questioned the wisdom of such a requirement, several comments expressed concern that the requirement, as written, was too vague. In response, these subsections have been modified to clearly limit the responsibility of an owner or operator to respond to significant physical evidence of a release to those occurrences that could reasonably be expected to be the result of a release from the regulated unit. Subsections 66264.98(l) and 66265.98(m) have also been rewritten to describe the responsibility of the owner or operator to notify the Department within 7 days of determining that there is significant physical evidence of a release, and submit an application for a permit modification (or amended water quality sampling and analysis plan) within 90 days of such determination.

**Comment AF22 - Section 66264.91(c)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires O/O to continue detection monitoring during evaluation monitoring or corrective action."

Comment response: The requirement to continue detection monitoring during an evaluation monitoring or corrective action program if necessary to protect human health and the environment was added to the proposed regulations in order to provide enough flexibility to design a total monitoring program that efficiently satisfies the

goal of protecting human health and the environment. This comment does not suggest that the requirement is bad, only that it is new. This requirement has not been changed in the proposed regulations.

**Comment AF23 - 40 CFR Section 66264.93(c)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Exclusion of Appendix VIII hazardous constituents from [constituents of concern if] found not to pose a hazard"

Comment response: In the proposed regulations, the Department has proposed a new approach to selecting monitoring parameters that should provide the owner or operator and the permit writer with the flexibility needed to design an efficient monitoring program with greater confidence than is possible under existing regulations. By periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not provide for exemptions from the list of constituents of concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. Although the initial cost of monitoring for constituents of concern may in some cases be high, the Department believes that it will be compensated by savings during routine monitoring.

**Comment AF24 - Section 66264.94(a)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Establishes background as level of concern in each environmental medium."

Comment response: Under existing Subchapter 15 concentration limits are established at background values for ground water, surface water, and the unsaturated zone. Under the proposed regulations, concentration limits are established at background values for ground water, surface water, and the unsaturated zone unless a concentration limit greater than background is approved by the Department for a corrective action program.

**Comment AF25 - Section 66264.94(c)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Establishment of ACL's."

Comment response: This comment correctly identifies a difference between the proposed regulations and existing federal regulations. This comments does not suggest that the change is inappropriate. The regulation has not been modified based solely on this comment.

Comment AF26 - Section 66264.94(c)(1)

Commentor AF - California Council for Economic and Environmental Balance

Comment: "It is technologically or economically infeasible to achieve background - determined based on an engineering feasibility, public testimony and other relevant data."

Comment response: This comment correctly identifies a difference between the proposed regulations and existing federal regulations. This comments does not suggest that the change is inappropriate. The regulation has not been modified based solely on this comment.

Comment AF27 - Section 66264.94(c)(3)

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Proposed standard is the lowest that is technologically or economically achievable - new conditions."

Comment response: This comment correctly identifies a difference between the proposed regulations and existing federal regulations. This comments does not suggest that the change is inappropriate. The regulation has not been modified based solely on this comment.

Comment AF28 - Section 66264.94(c)(5)

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Point of exposure is at the point of compliance - precludes consideration of attenuation factor.

66264.94(c)(6)

66264.94(c)(7)

66264.94(c)(8)"

Comment response: This comment correctly identifies differences between the proposed regulations and existing federal regulations. This comments does not suggest that the change is inappropriate. The regulation has not been modified based solely on this comment.

**Comment AF29 - Section 66264.95(b)(2)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Provides that "contiguous" regulated units may be grouped into a single waste management area for purposes of monitoring if certain conditions are met."

Comment response: Existing Subchapter 15 only allows the establishment of a shared point of compliance for contiguous regulated units. The requirements in the proposed regulations are consistent with that provision. The regulation has not been modified based solely on this comment.

**Comment AF30 - Section 66264.97(d)(1)(4)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Sets forth the basic requirements for all unsaturated zone monitoring systems."

Comment response: This comment correctly states that the proposed regulations contain a considerable amount of new language describing the unsaturated zone monitoring system requirements. Since this comment does not suggest that the requirements are inappropriate, no changes have been made to the regulations based solely on this comment.

**Comment AF31 - Section 66264.97(d)(5)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Vadose zone monitoring 'when feasible' - if it can be demonstrated that no method of monitoring will provide indication of a release."

Comment response: This comment correctly identified a difference between existing state regulations and the proposed regulations. Based on this and other comments, the following language has been added to section 66264.97(d)(5): "... For a regulated unit that has operated or has received all necessary permits for construction and

operation before the effective date of this article, the Department may omit all or part of unsaturated zone monitoring from the monitoring program if the owner or operator demonstrates to the satisfaction of the Department that installation of unsaturated zone monitoring devices is not feasible."

**Comment AF32 - Section 66264.97(c)(3)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Provides that if a facility contains contiguous regulated units, separate groundwater monitoring systems may be required [see 66264.95(b)(2)]."

Comment response: Existing Subchapter 15 only allows the establishment of a shared point of compliance for contiguous regulated units. The requirements in the proposed regulations are consistent with that provision. The regulation has not been modified based solely on this comment.

**Comment AF33 - Section 66264.97(e)(14)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Provides that groundwater monitoring data must be maintained in a format that allows for recognition of trends - new requirement."

Comment response: This comment correctly identifies a new requirement that monitoring data be maintained in a format that allows for recognition of trends. The comment does not suggest that the requirement is inappropriate. No changes have been made to the requirement based upon this comment.

**Comment AF34 - Section 66264.98(g)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "0/0 determines whether there has been a statistically significant increase in any constituent of concern. Entire list sampled periodically."

Comment response: In the proposed regulations, the Department has proposed a new approach to selecting monitoring parameters that should provide the owner or operator and the permit writer with the flexibility needed to design an efficient monitoring program with

greater confidence than is possible under existing regulations. By periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not provide for exemptions from the list of constituents of concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. Although the initial cost of monitoring for constituents of concern may in some cases be high, the Department believes that it will be compensated by savings during routine monitoring.

**Comment AF35 - Section 66264.98(k)(1)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires immediate sampling of all monitoring parts for all constituents of concern."

Comment response: This comment correctly identifies a new requirement to sample for all constituents of concern whenever there is statistically significant evidence of a release. The comment does not suggest that the requirement is inappropriate. No changes have been made to the proposed regulations based solely on this comment.

**Comment AF36 - Section 66264.99(c)(d)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires the 0/0 to periodically monitor for all constituents of concern according to the sampling frequency specified in the facility permit."

Comment response: In the proposed regulations, the Department has proposed a new approach to selecting monitoring parameters that should provide the owner or operator and the permit writer with the flexibility needed to design an efficient monitoring program with greater confidence than is possible under existing regulations. By periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not

provide for exemptions from the list of constituents of concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. Although the initial cost of monitoring for constituents of concern may in some cases be high, the Department believes that it will be compensated by savings during routine monitoring.

**Comment AF37 - Section 66269.100(c)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires that corrective act reduce the concentration of constituents of concern to applicable concentration levels through removal or treatment in place. O/O take actions to prevent subsequent exceedance of concentration limits."

Comment response: This comment simply summarizes the requirements found in section 66264.100(c). The comment does not suggest that the requirement is inappropriate. Since these requirements are consistent with existing state and federal regulations, no changes have been made to the proposed regulations based upon this comment.

**Comment AF38 - Section 66264.100(d)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires establishment and implementation of a water quality monitoring program to demonstrate effectiveness of corrective action program. Existing corrective action may be based upon the compliance monitoring program."

Comment response: This comment correctly identifies a difference between existing regulations and the proposed regulations. The comment does not suggest that the requirement is inappropriate. No changes have been made to the proposed regulations based upon this comment.

**Comment AF39 - Section 66264.100(e)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Corrective action completed in reasonable time - time determined by DHS."

Comment response: This comment correctly identifies a difference between existing regulations and the proposed regulations. The

comment does not suggest that the requirement is inappropriate. No changes have been made to the proposed regulations based upon this comment.

**Comment AF40 - Section 66264.100(h)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Provides that the 0/0 may be required to remove or treat an amount of waste equivalent to that released to the environment."

Comment response: Several comments were received about the meaning of this requirement. In retrospect, the Department agrees that the enforcement of this requirement may not be possible at this time. Since this is not an existing requirement under state or federal regulations, the Department has decided to delete this section from the proposed regulations.

**Comment AF41 - Section 66264.118 (a) & (d)**

Commentor AF - California Council on Economic and Environmental Balance (CCEEB)

Comment summary: The commentor has concerns about the proposed language of section 66264.118 (a) about the contingent post-closure requirement for clean closure, and section 66264.118 (d) about the modification of post-closure permit for certain reasons.

Response: The 40 Code of Federal Regulations (CFR) version of proposed sections 66264.118 (a), (d) (3) and (d) (4) contain language which applies only to those permitted surface impoundments and waste pile facilities that initially (at the time of permit application/issuance) intend to clean close, and are, therefore, not required under 40 CFR to prepare a contingent post-closure plan to cover the possibility of not being able to clean close. This language is not being included in the proposed State regulation to conform to the existing and more stringent title 22, California Code of Regulations (CCR) sections 67288 (d) and 67351 (c), which require all permitted surface impoundments and waste piles that initially plan to clean close to have a contingent post-closure plan to cover the possibility of being unable to clean close.

The second part of the comment about the modification of post-closure permit for certain reasons is not clear to respond to. Therefore, this part of the comment has not been responded.

**Comment AF42 - Section 66264.142(h) (1)(B)**

Commentor AF - California Council for Economic and Environmental Balance

Comment summary: Guarantee shall remain in effect until certain conditions are met - no longer in Title 40 Code of Federal Regulations so why is it there.

Comment response: This comment was not clear, however, an attempt has been made to address the concern. The language regarding the guarantee currently exists in title 22, California Code of Regulations and is more stringent since it no longer exists in Title 40, Code of Federal Regulations.

**Comment AF43 - section 66264.221 (a) (1)**

Commentor - California Council for Environmental and Economic Balance

Comment summary: The commentor believes that the addition of the term "maximum probable" creates a new requirement that exceeds both current California requirements and Federal regulations.

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

**Comment AF44 - Section 66264.273 (d)**

Commentor - California Council for Environmental and Economic Balance

Comment summary: The commentor believes that the addition of the phrase "...test, and properly dispose of at least...", creates a new requirement that exceeds both current California requirements and Federal regulations.

Comment response: The word "test" has been deleted from the added language. The phrase "and properly dispose of" will remain as this does not create a requirement above those that already exist in the regulations of this Division.

**Comment AF45 - Section 66264.314 (a)**

Commentor - California Council for Environmental and Economic Balance

Comment summary: The commentor believes that the language contained in this section creates new regulation which prohibits the disposal of containerized liquid wastes.

Comment response: The language in this subsection has been amended to match the text contained in 40 CFR, with the exception of the effective date of the state regulations. The disposal of containerized liquid wastes (or wastes containing free liquids) is already prohibited under title 22, CCR, section 67422, and 40 CFR section 264.314 (d).

**Comment AF46 - Section 66264.601 (a)**

Commentor AF - California Council on Economic and Environmental Balance (CCEEB)

Comment summary: The commentor has concern about the factors relevant to prevention of releases which may have adverse effects on human health or the environment.

Response: This comment is not very clear. However, this proposed section has been taken directly from the 40 Code of Federal Regulations section 264.601, and sets forth environmental performance standards for miscellaneous units.

**Comment AF47 - Section 66264.602**

Commentor AF - California Council on Economic and Environmental Balance (CCEEB)

Comment summary: The commentor has concerns about monitoring, analysis, inspection, response, reporting and corrective actions.

Response: This comment is not very clear. However, this section has been taken directly from 40 Code of Federal Regulations section 264.602, and sets forth requirements for miscellaneous units pertaining to monitoring, analysis, inspection, response, reporting and corrective actions.

**Comment AF48 - Section 66264.603**

Commentor AF - California Council on Economic and Environmental Balance (CCEEB)

Comment summary: "II-18-179  
Post-closure care"

Response to comment: This comment is not very clear. However, this section has been taken directly from 40 Code of Federal Regulations section 264.603, and sets forth post-closure care requirements for miscellaneous units.

**Comment AF49 - Section 66265.4**

Commentor AF - California Council on Economic and  
Environmental Balance

Comment summary: This comment is not very clear. It appears that this comment is referred to the Department's ability to take enforcement action.

Comment response: Proposed section 66265.4 clarifies the Department's ability to take enforcement actions pursuant to Health and Safety Code. This section conforms to the corresponding federal regulation except that the reference to RCRA section 7003 has been changed to the corresponding Health and Safety Code section, because the State does not have authority to take enforcement action under RCRA section 7003. Additionally, this change clarifies that the Department may pursue enforcement actions using the full range of its State authority. This change is being made for completeness and clarity and does not in any way alter the Department's enforcement authority.

**Comment AF50 - Section 66264.25 (b) & 66265.25 (b)**

Commentor AF - California Council on Economic and  
Environmental Balance

Comment summary: This seems to refer to the fact that the Department proposes to change certain design standards from a requirement to withstand a "Maximum credible earthquake" to a requirement to withstand a "maximum probable earthquake".

Response: The Department agrees that the proposed regulations would change the design standards, and the Department has accommodated this comment by revising the proposed regulation so that it retains the standard requirement to withstand a "maximum credible earthquake" which is in existing title 22, California Code of Regulations.

**Comment AF51 - Section 66265.90**

Commentor AF - California Council for Economic and Environmental  
Balance

Comment: "Establishes applicability to regulated units effective date omitted from proposal. Requires responses to all releases. (Not just uppermost aquifer.)"

Comment response: This comment correctly identified an error in the definition of a regulated unit at interim status facilities. In response to this and other comments, the applicability of these regulations for units at interim status facilities has been made

discretionary for units that have not received hazardous waste since November 19, 1980.

This comment also correctly identified the requirement that the owner or operator must respond to all releases from the regulated unit. The comment does not suggest that this requirement is inappropriate. The regulation has not been modified based solely on this comment.

**Comment AF52 - 40 CFR Section 264.90 (d)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Missing"

Comment response: This comment correctly identifies the omission of the monitoring and response requirements for miscellaneous units at interim status facilities. This is consistent with existing State and federal regulations. The regulations have not been changed in response to this comment.

**Comments AF53-AF75 - Chapter 15, Article 6**

Comment response: This group of comments correctly identifies several differences between existing regulations and the proposed regulations. The comments do not suggest that the requirements are inappropriate. As discussed in the statement of reasons, the out-dated federal requirements for monitoring at interim status facilities have been replaced by a self-implementing version of the requirements for permitted facilities. Under the proposed regulations, a ground water monitoring program designed for an interim status facility will also satisfy the requirements for a permitted facility and the requirements in Subchapter 15. (Note : Each comment is also addressed individually below.)

**Comment AF53 - Section 66265.91(a)(3)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires evaluation monitoring be initiated whenever there is significant physical evidence of release."

Comment response: This requirement was added to the proposed regulations to emphasize the requirement implied in 40 CFR section 264.98 that the owner or operator must respond appropriately whenever the owner or operator determines that the water quality monitoring system is not functioning properly (i.e., has not

provided an early indication of a release from the regulated unit, or is not capable of doing so). Although no comments questioned the wisdom of such a requirement, several comments expressed concern that the requirement, as written, was too vague. In response, this subsection has been modified to clearly limit the responsibility of an owner or operator to respond to significant physical evidence of a release to those occurrences that could reasonably be expected to be the result of a release from the regulated unit.

**Comment AF54 - Section 66265.91(b)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Require ISD 0/0 to develop and follow a water quality sampling and analysis plan - (new)."

Comment response: In order to make the monitoring requirements for interim status facilities self-implementing, an interim document will be used in place of the facility permit. This document is called the water quality sampling and analysis plan. It must be prepared, submitted to the Department, and implemented by the owner or operator. The Department will review these documents and modify them when necessary to protect human health or the environment. The effort that must be spent developing this document should not need to be repeated when preparing an adequate monitoring program for a permitted facility or for compliance with the requirements in proposed Subchapter 15. The comment does not suggest that the requirement is inappropriate. No changes have been made to the proposed regulations based upon this comment.

**Comment AF55 - Section 66265.91(b)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires the 0/0 to continue detection monitoring during evaluation monitoring as necessary."

Comment response: The requirement to continue detection monitoring during an evaluation monitoring or corrective action program if necessary to protect human health and the environment was added to the proposed regulations in order to provide enough flexibility to design a total monitoring program that efficiently satisfies the goal of protecting human health and the environment. This comment does not suggest that the requirement is inappropriate. This requirement has not been changed in the proposed regulations.

**Comment AF56 - 40 CFR Section 264.93**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Appendix VIII hazardous constituent from the facility permit if it is found not to pose a hazard. No flexibility for DHS."

Comment response: In the proposed regulations, the Department has proposed a new approach to selecting monitoring parameters that should provide the owner or operator and the permit writer with the flexibility needed to design an efficient monitoring program with greater confidence than is possible under existing regulations. By periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not provide for exemptions from the list of constituents of concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. Although the initial cost of monitoring for constituents of concern may in some cases be high, the Department believes that it will be compensated by savings during routine monitoring.

**Comment AF57 - Section 66265.94**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Proposed regulation does not recognize alternate concentration limits."

Comment response: This comment correctly identified the omission of alternate concentration limits from the proposed regulations. Under the proposed regulations, alternate concentration limits (now called concentration limits greater than background) are only available during a corrective action program. Since the interim status regulations do not contain a corrective action program, the text from 66264.94 was not repeated in the proposed regulations. During evaluation monitoring the owner or operator is required to prepare to perform corrective action pursuant to section 66264.100. The owner or operator may submit a proposal for a concentration limit greater than background in Part B of the permit application required pursuant to section 66265.99(d).

**Comment AF58 - Section 66265.95(b)(2)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Provides that contiguous regulated units may be grouped into a single waste management area for purposes of monitoring if certain conditions are met."

Comment response: Existing subchapter 15 only allows the establishment of a shared point of compliance for contiguous regulated units. The requirements in the proposed regulations are consistent with that provision.

**Comment AF59 - Section 66265.97(d)(5)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Allows DHS to grant a variance from unsaturated zone monitoring if it can be demonstrated that no method of monitoring will provide indication of a release. Feasibility -> no method provide any indication"

Comment response: In response to this and other comments, the following language has been added to section 66264.97(d)(5): "... For regulated unit that has operated or has received all necessary permits for construction and operation before the effective date of this article, the Department may omit all or part of unsaturated zone monitoring from the monitoring program if the owner or operator demonstrates to the satisfaction of the Department that installation of unsaturated zone monitoring devices is not feasible."

**Comment AF60 - Section 66265.97(e)(3)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "monitoring of contiguous regulated units"

Comment response: Existing subchapter 15 only allows the establishment of a shared point of compliance for contiguous regulated units. The requirements in the proposed regulations are consistent with that provision.

Comments AF61 to AF69 - Numbering error, these comments do not exist - see comment originals in rulemaking file

**Comment AF70 - Section 66265.98(g)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires 0/0 to determine whether there has been a statistically significant increase in any constituent of concern."

Comment response: In the proposed regulations, the Department has proposed a new approach to selecting monitoring parameters that should provide the owner or operator and the permit writer with the flexibility needed to design an efficient monitoring program with greater confidence than is possible under existing regulations. By periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not provide for exemptions from the list of constituents of concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. Although the initial cost of monitoring for constituents of concern may in some cases be high, the Department believes that it will be compensated by savings during routine monitoring.

**Comment AF71 - Section 66265.98(k)(1)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires immediate sampling of all monitoring points for all constituents of concern/now requirement for ISD."

Comment response: This comment correctly identifies a new requirement to sample for all constituents of concern whenever there is statistically significant evidence of a release. The comment does not suggest that the requirement is inappropriate. No changes have been made to the proposed regulations based upon this comment.

**Comment AF72 - Section 66265.98(k)(2)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires immediate sampling of all monitoring points in the affected medium for Appendix IX constituents."

Comment response: This comment correctly identifies a requirement for permitted facilities that has not been previously applied to interim status facilities. The comment does not suggest that the requirement is inappropriate. No changes have been made to the proposed regulations based upon this comment.

**Comment AF73 - Section 66265.98(k)(3)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "New requirement. Appendix IX constituent requires any such contaminant that are verified must be added to the facility's list of contaminants."

Comment response: This comment correctly identifies a requirement for permitted facilities that has not been previously applied to interim status facilities. The comment does not suggest that the requirement is inappropriate. No changes have been made to the proposed regulations based upon this comment.

**Comment AF74 - Section 66265.99(e)(3)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires 0/0 to conduct at least semi-annual monitoring during compliance period for all parameters listed in the WQSAP."

Comment response: This comment correctly identifies a requirement for permitted facilities that has not been previously applied to interim status facilities. The comment does not suggest that the requirement is inappropriate. No changes have been made to the proposed regulations based upon this comment.

**Comment AF75 - Section 66265.99(E)(4)**

Commentor AF - California Council for Economic and Environmental Balance

Comment: "Requires 0/0 to periodically monitor for all constituents of concern according to the sampling frequency specified in the WQSAP but at least every 5 years."

Comment response: In the proposed regulations, the Department has proposed a new approach to selecting monitoring parameters that should provide the owner or operator and the permit writer with the flexibility needed to design an efficient monitoring program with greater confidence than is possible under existing regulations. By

periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not provide for exemptions from the list of constituents of concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. Although the initial cost of monitoring for constituents of concern may in some cases be high, the Department believes that it will be compensated by savings during routine monitoring.

**Comment AF76 - Section 66265.112 (b)**

Commentor AF - California Council on Economic and Environmental Balance

Comment summary: The proposed section requires closure plan to justify when the facility will be partially and finally closed. The proposed section requires an estimated inventory of all hazardous waste ever located at the facility over its entire life, not just active life.

Comment: As regards to the first part of the comment, the language is being added to this section to conform with the existing title 22, CCR section 67212 requirement. The corresponding federal regulation does not include this requirement and, therefore, is less stringent. The regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law.

In response to second part of the comment, that the requirement is to estimate the inventory of all hazardous waste ever located at the facility, the Department would like to point out that this requirement is for the "active life of the facility" and not for its "entire life" (section 66265.112 (b) (3)).

**Comment AF77 - Section 66265.118 (c) (5)**

Commentor AF - California Council of Economic and Environmental Balance (CCEEB)

Comment summary: The commentor is concerned about the proposed requirement of

periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring

parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not provide for exemptions from the list of constituents of concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. Although the initial cost of monitoring for constituents of concern may in some cases be high, the Department believes that it will be compensated by savings during routine monitoring.

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Comment: As regards to the first part of the comment, the language is being added to this section to conform with the existing title 22, CCR section 67212 requirement. The corresponding federal regulation does not include this requirement and, therefore, is less stringent. The regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law.

In response to second part of the comment, that the requirement is to estimate the inventory of all hazardous waste ever located at the facility, the Department would like to point out that this requirement is for the "active life of the facility" and not for its "entire life" (section 66265.112 (b) (3)).

**Comment AF77 - Section 66265.118 (c) (5)**

Commentor AF - California Council of Economic and Environmental Balance (CCEEB)

Comment summary: The commentor is concerned about the proposed requirement of a quantitative risk assessment or equivalent demonstration as part of a post-closure plan.

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 section 66265.118 (c) (5).

**Comment AF78 - Section 66265.145(a)(3) (A)**

Commentor AF - California Council for Economic and Environmental Balance

Comment summary: Establishes the amount of the first payment to be made in to the trust fund existing facilities.

Comment response: Information is insufficient. Cannot determine an appropriate response.

**Comment AF79 - Section 66265.147(h)(1)(B)**

Commentor AF - California Council for Economic and Environmental Balance

Comment summary: Based upon Title 40, Code of Federal Regulations 265.147(g)(1)(ii) which was removed and reserved by federal register.

Comment response: Information is insufficient. Cannot determine an appropriate response.

**Comment AF80 - Section 66265.193 (c)**

Commentor AF - California Council on Economic and Environmental Balance

Comment summary: The proposed section provides minimum secondary containment system requirements. In particular, the impervious base or foundation must underlie the tank system and be capable of supporting the secondary containment system as in section 66264.193 (c).

Comment response: The proposed regulation of the referenced section conforms with the corresponding federal regulation for interim status facilities. The additional requirement incorporated as section 66264.193 (c) (2) is to conform with the existing State regulation for permitted facilities only (California Code of Regulations (CCR), title 22, section 67251 (b) (1). Neither title 22 CCR nor 40 Code of Federal Regulations has an equivalent regulation to section 66264.193 (c) (2) for interim status facilities.

**Comment AF81 - Section 66265.193 (e)**

Commentor AF - California Council on Economic and Environmental Balance (CCEEB)

Comment summary: Containment systems for permitted facilities either prevent run-on or be capable of containing run-on for a 24-hour, 25 year storm in addition to the capacity requirements.

Comment response: The Department does not concur with the commentor's interpretation of this regulation. The containment requirements addressed in this proposed regulation are for interim status facilities and not for permitted facilities as stated in the comment. The wording in proposed sections 66265.193 (e) (1) (B) and (e) (2) (B) (on which the commentor has his concerns) has been modified from the existing corresponding federal regulation to clarify that the system must either prevent or be capable of containing both run-on and infiltration. The wording in the corresponding federal regulation could be erroneously interpreted to only require prevention/containment of run-on or infiltration. This interpretation, however, is not logical in the framework of environmental protection. Many tank systems could be subject to both run-on and infiltration from a storm, and protecting against one and not the other would negate the intended effect of this regulation. These subsections are also being modified to make it clear that the required excess capacity pertains to the run-on and infiltration (rather than the precipitation itself) from a 25 year, 24 hour storm. This change is necessary for internal consistency within these subsections. These proposed changes conform with the corresponding regulations in the existing title 22, California Code of Regulations, section 67251 (b).

**Comment AF82 - section 66265.228 (a) (2)**

Commentor - California Council for Environmental  
and Economic Balance

Comment summary: The commentor states that the language in this section requires prevention (commentor's underlines) rather than minimization of the downward entry of water into a closed unit, and that this change creates new regulation which is more stringent than existing State or Federal law.

Comment response: The commentor is in error. The proposed text of section 66265.228 (a) (2) (C) (1) reads:

"Minimize the downward entry of water into the closed impoundment throughout a period of at least 100 years."

This language is currently contained in title 22, CCR section 67316.

**Comment AF83 - section 66265.272 (c)**

Commentor - California Council for Environmental  
and Economic Balance

Comment summary: Proposed section 66265.272(c) requires that the run-off management system be capable of collecting, controlling, testing and properly disposing of the water volume from a 24-hour 25-year storm.

Comment response: See response to Comment AF44.

**Comment AF84 - section 66265.276**

Commentor - California Council for Environmental  
and Economic Balance

Comment summary: The commentor believes that the language which has replaced the federal text, prohibiting the growth of food chain crops in the treatment zone at interim status facilities, creates a new regulation that exceeds the current State and federal requirements.

In the cover letter to their comments, the California Council for Environmental and Economic Balance (CCEEB) state,

"We have understood that the purpose of this rulemaking was to revise Title 22 to conform its provisions to federal law in order for California to receive authorization to administer the federal program. ...It has not been the purpose of this effort to create new state requirements which are more strict than both federal and current state requirements."

CCEEB noted that Assemblyman Quackenbush expressed this policy as legislative intent in a letter to the Assembly Journal on August 23, 1988.

Comment response: Extending the prohibition on the growth of food chain crops to include both permitted and interim status facilities, does create a new regulatory requirement. This change is necessary in order to establish consistency in the proposed California hazardous waste regulations. Current title 22, CCR section 67363 prohibits the growth of food chain crops in the treatment zone at permitted land treatment facilities, while title 22, CCR section 67371 governing interim status land treatment facilities does not contain this prohibition. Prohibiting this activity at permitted facilities, while allowing it at interim status facilities, does not protect the health and well being of the citizens of California.

Assemblyman Quackenbush's letter, referred to in the comment, expresses intent only with respect to the legislation which he authored (AB 3383 and AB 4636). In his letter he states, "The new references to regulations added by these bills are not intended to grant the Department additional rulemaking authority". (emphasis added) In making this change in the existing regulations, the Department is exercising the rulemaking authority previously granted to it by the Legislature.

**Comment AF85 - section 66265.278 (i)**

Commentor - California Council for Environmental  
and Economic Balance

Comment summary: The commentor believes that the added language contained in this section which requires written notification within 7 days creates a new regulation which exceeds the current California requirements or the Federal regulations.

Comment response: This comment has been accommodated by eliminating the added requirement of 7 day written notification.

**Comment AF86 - Section 66265.280**

Commentor - California Council for Environmental  
and Economic Balance

Comment summary: It is not clear what the commentor is commenting on with regard to this section. The most likely comment is that the replacement of the federal text (the word "minimize") contained in subsection (a) (1 through 3), with the word "prevention", creates a new regulation which exceeds current California requirements or Federal regulations.

Comment response: This comment cannot be accommodated because current title 22, CCR section 67378 contains the word "prevention". The incorporation of this word into the federal language is necessary to retain the stringency of the current California regulations.

**Comment AF87 - Section 66265.314 (a)**

Commentor - California Council for Environmental  
and Economic Balance

Comment summary: The commentor believes that the deletion of the prefix "non" from the term, non-containerized waste, creates a new regulation which exceeds the current California requirements or Federal regulations.

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 AF88 - Section 66266.20(b)(2)**

Commentor AF - California Council for Economic and Environmental Balance

Comment summary: "66266.20(b)(2) The constituents of the recyclable materials that exceed pertinent STLC [Soluble Threshold Limit Concentration] values have become inseparable by physical means. Individual constituents inseparable [sic] IV-16-7". In the Department's opinion, the commentor believes that the addition of a requirement for regulatory exemption of recyclable materials used in a manner that constitutes disposal creates a new requirement that exceeds both current California state law and federal regulations. The addition in question requires that products that are used in a manner that constitutes disposal and that contain recyclable materials are not exempt from regulation unless the individual constituents of the recyclable materials that are hazardous by the STLC criteria of proposed section 66261.24 have become inseparable by physical means.

Comment response: Proposed section 66266.20(b) is based on 40 CFR section 266.20(b) which includes a requirement that recyclable materials used to produce products for use in a manner constituting disposal be chemically reacted so that they are rendered inseparable from the products by physical means. Since the STLC is one of the Department's applicable toxicity criteria for identification of hazardous wastes and recyclable materials under the circumstances set forth in existing state regulations (i.e., title 22, CCR, section 66699; proposed section 66261.24), the inclusion of the STLC-associated language in proposed section 66266.20(b)(2), simply serves to identify a portion of the universe of recyclable materials required to be rendered physically inseparable from the products that contain them. Obviously, if the hazardous constituents of the recyclable material are not rendered physically inseparable from the products, then the recyclable material itself cannot be considered to be rendered physically inseparable from the products either. Therefore, the comment is irrelevant and is not being accommodated.

**Comment AF89 - Section 66266.20(b)(3)**

Commentor AF - California Council for Economic and Environmental Balance

Comment summary: "66266.20(b)(3) The constituents of the recyclable materials that exceed pertinent TTLC [Total Threshold Limit Concentration] values are entrapped so as to prevent hazards resulting from the release of those constituents in particulate matter [sic] IV-16-7". In the Department's opinion, the commentor believes that the addition of a requirement for regulatory exemption of recyclable materials used in a manner that constitutes disposal creates a new requirement that exceeds both current California state law and federal regulations. The addition in

question requires that products that are used in a manner that constitutes disposal and that contain recyclable materials are not exempt from regulation unless the constituents of the recyclable materials that are hazardous by the TTLC criteria of proposed section 66261.24 are entrapped so as to prevent hazards to health and to the environment, resulting from the release of those constituents in particulate matter.

Comment response: Proposed section 66266.20(b) is based on 40 CFR section 266.20(b) which includes a requirement that recyclable materials used to produce products for use in a manner constituting disposal be chemically reacted so that they are rendered inseparable from the products by physical means. Since the TTLC is one of the Department's applicable toxicity criteria for identification of hazardous wastes and recyclable materials under the circumstances set forth in existing state regulations (i.e., title 22, CCR, section 66699; proposed section 66261.24), the inclusion of the TTLC-associated language in proposed section 66266.20(b)(3) simply serves to identify a portion of the universe of recyclable materials required to be rendered physically inseparable from the products that contain them, and to state the purpose of that requirement. Obviously, if the hazardous constituents of the recyclable material are not rendered physically inseparable from the products, then the recyclable material itself cannot be considered to be rendered physically inseparable from the products either. Also, if the hazardous constituents are released, health and environmental hazards could result. Therefore, the comment is irrelevant and is not being accommodated.

**Comment AF90 - Section 66266.20(b)(6)**

Commentor AF - California Council for Economic and Environmental Balance

Comment summary: "66266.20(b)(6) Recyclable material IV-16-9". In the Department's opinion, the commentor believes that the addition of a requirement for regulatory exemption of recyclable materials used in a manner that constitutes disposal creates a new requirement that exceeds both current California state law and federal regulations. The addition in question requires that products that are used in a manner that constitutes disposal and that contain recyclable materials are not exempt from regulation unless the facility that produced the product is authorized by the Department pursuant to these regulations, or the product is otherwise exempt under other provisions of law or regulations.

Comment response: As discussed in the responses to Comment Nos. T-2 and T-28, this commentor also apparently believes incorrectly that the permit requirement set forth in proposed section 66266.20(b)(6) is an entirely new requirement that does not exist in either current state law or federal regulations. Unlike federal regulations, current state law requires that recyclable materials used in a manner constituting disposal be regulated as any other

hazardous wastes, because such recyclable materials are not eligible for any of the exemptions in Health and Safety Code section 25143.2. Since facilities managing hazardous wastes are subject to hazardous waste facility permit requirements, recyclable materials used in a manner constituting disposal are subject to such permit requirements. State law requires a permit for the recycling process itself, and even the federally unregulated federal universe is regulated under state permit requirements. Therefore, the permit requirement in proposed section 66266.20(b)(6) is not a new requirement that does not exist in state law, contrary to the commentor's apparent contention.

Notwithstanding the invalidity of the above comment, the comment is being accommodated, but for the reasons stated in the Department's response to Comment No. T-2. Thus, proposed section 66266.20(b)(6) is being deleted.

#### **Comment AF91 - Section 66266.20(c)**

Commentor AF - California Council for Economic and Environmental Balance

Comment summary: "66266.20(c) Agricultural use of recycled material IV-16-10". In the Department's opinion, the commentor believes that the regulation of recyclable materials used in agriculture under proposed Article 3 creates a new requirement that exceeds both current California state law and federal regulations. Proposed section 66266.20(c) provides that recyclable materials used in agriculture are regulated under proposed Article 3 (recyclable materials used in a manner that constitutes disposal) if they contain RCRA hazardous wastes, and if they are materials which are to be processed to produce a product to be used in a manner that constitutes disposal, or are processed products which are not exempt from regulation pursuant to proposed section 66266.20(b).

Comment response: Proposed section 66266.20(c) requires that recyclable materials (and products derived from them) that are used in agriculture (as specified) and that are RCRA hazardous wastes are subject to regulation as recyclable materials used in a manner constituting disposal under the provisions of proposed Article 3. Corresponding federal regulations (40 CFR Part 266, Subpart C) do not distinguish between recyclable materials (and products derived from them) used in agriculture and recyclable materials (and products derived from them) used in any other manner that qualifies as "use constituting disposal". Therefore, proposed section 66266.20(c) is not imposing a new requirement that exceeds current federal regulations.

Current state law requires recyclable materials that are RCRA hazardous wastes and that are being used in agriculture to be regulated as hazardous wastes, unless the Department adopts regulations to exclude materials from such regulation [Health and

Safety Code section 25143.2(e)(1)]. Since proposed Article 3 would essentially regulate such recyclable materials as hazardous wastes anyway, proposed section 66266.20(c) does not impose a new requirement that exceeds existing state law.

Existing state regulations, which preceded the relevant existing state law, prohibit the use in agriculture of recyclable materials that are RCRA hazardous wastes, unless those materials are processed to eliminate the constituents or characteristics that essentially made them RCRA hazardous wastes [title 22, CCR section 66816(c)(4)(C); proposed section 66266.110(c)(4)(C)]. Therefore, one could conclude that if the products meet the requirements in proposed section 66266.20(b) (which essentially ensure that the hazardous constituents or characteristics are not imparted to the processed products), then the prohibition does not apply. However, since proposed section 66266.20(c), in conformance with existing state law, allows the use in agriculture of recyclable materials that are RCRA hazardous wastes even if the processed products fail the requirements in proposed section 66266.20(b), but imposes "use constituting disposal" requirements on them, proposed section 66266.20(c) actually is less stringent than existing title 22, CCR section 66816(c)(4)(C) which prohibits such use altogether. Thus, the commentor's apparent contention that proposed section 66266.20(c) regulates RCRA hazardous wastes more stringently than existing Health and Safety Code section 25143.2 or title 22, CCR, section 66816(c)(4)(C), is unfounded. Therefore, the comment is not being accommodated.

**Comment AF92 - Section 66268.5 Subsection (f)**

Commentor - California Council for Economic and Environmental Balance

Comment summary: The commentor is apparently asserting that the proposed section 66268.5(f) goes beyond the current provisions of State or federal law.

Comment response: The Department disagrees with the comment. The proposed section 66268.5(f) adopts the existing section 67732(f) CCR which was based on 40 CFR 268.5(f). There are no changes from 40 CFR 268.5(f) except the generic changes which are explained in the Statement of Reasons. Since existing State and federal regulations are being adopted, the proposed regulation should not go beyond the current provisions of State or federal law.

**Comment AF93 - Section 66268.5 Subsection (j)**

Commentor - California Council for Economic and Environmental Balance

Comment summary: The commentor is asserting that the proposed section 66268.5(j) goes beyond the current provisions of State or federal law.

Comment response: The comment is accommodated. The inclusion of subsection (j) in the proposed section 66268.5 is an error. Subsection (j) has been deleted.

**Comment AF94 - Section 66268.30 Subsection (a)**

Commentor - California Council for Economic and Environmental Balance

Comment summary: The commentor is asserting that the proposed section 66268.30 (a) goes beyond the current provisions of State or federal law.

Comment response: The proposed section is based on 40 CFR 268.30. The exemption for small quantity generators of 100 kg/month is eliminated in the proposed section because the State statute does not recognize the small quantity generator exemption. The reference to injection wells is eliminated because the California land disposal restrictions apply to injection wells. [See H&SC section 25179.3(h)]. Disposal by deep-well injection is not regulated under separate regulations, as in the federal system. (See 40 CFR part 148, and also 53 FR 31144, August 17, 1988.)

**Comment AF95 - Section 66270.10 (f) (1)**

Commentor AF - California Council on Economic and Environmental Balance

Comment summary: Parts A and B of the permit application or a permit modification request must be submitted, and a finally effective permit or permit modification must be received before construction even begins.

Comment response: Department concurs with the CCEEB interpretation of the above referenced section. This section is being revised to conform with existing Health and Safety Code section 25201 (b), which is more specific than the corresponding federal regulation. Please note that a statutory language cannot be repealed through the authorization process. Therefore, this comment was not accommodated. However, please note that the proposed section 66270.42 (b) (8) has been revised to allow the permittee to perform construction associated with a Class 2 modification while the application is still pending. Revised section 66270.42 (b) (8) now reads as follows:

66270.42 (b) (8): "Except for construction of new hazardous waste management units, the permittee may perform any construction

associated with a Class 2 modification request beginning 60 days after the submission of the request unless the Department establishes a later date for commencing construction and informs the permittee in writing before day 60. Construction performed pursuant to this subsection shall not affect the Department's authority to approve or disapprove a permit modification request for the subject hazardous waste management activity."

**Comment AF96**

Commentor - California Council on Economic and Environmental Balance

Comment: Section 66270.14(m) provides that, subject to a specified exemption, permit applicants must submit with the Part B application a quantitative risk assessment.

Comment response: See response to comment T21.

**Comment AF97 - Section 66270.30**

Commentor AF - California Council on Economic and Environmental Balance (CCEEB)

Comment summary: Referenced section provides conditions that are applicable to all permits in the event of permit non-compliance. The commentor is concerned about the underlined words in the following phrases: " to take all reasonable steps to minimize or correct releases;" "certain information, when requested by the DHS must be provided within 30 days."

Comment response: The word "correct" has been added in the proposed section 66270.30 (d) in order to comply with existing, more stringent State regulations (title 22, California Code of Regulations, section 66374 (d)). Since this is a current State requirement, as such it will not cause any additional impact on the facilities.

The phrase "not to exceed 30 calendar days unless a time extension is approved by the Department" has been inserted in section 66270.30 (h). This additional language is necessary to define the term "reasonable time", which by itself is ambiguous and, therefore, makes this 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 AF98 - Section 66270.42 (a) (1) (A)

Commentor AF - California Conference on Economic and  
Environmental Balance (CCEEB)

Comment summary: Current federal regulation (section 270.42 (a) (1) (i) requires permittees to notify the Department within 7 days after a Class 1 modification is put into effect. This provision has been modified in the proposed regulations to require that the permittee notify the Department at least 30 days before a Class 1 modification is put into effect.

Comment response: The Department concurs with the commentor's interpretation of this regulation. The proposed regulation has been modified from the existing federal regulation 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 exempt from the California Environmental Quality Act.

cost of meeting financial responsibility and other requirements, as well as paying facility fees would strain the resources of AIRA members beyond the breaking point.

"It should be noted that many of the explicit treatment exemptions granted by the Environmental Protection Agency ("EPA") have been available to waste generators in California because of the Department's pragmatic approach toward defining when a material becomes a waste. AIRA is concerned that the adoption of EPA regulatory language while deleting the exemptions granted by EPA could potentially be interpreted by EPA to limit the Department's discretion in determining when a material becomes a waste. Accordingly, AIRA members urge some mechanism short of qualification as a treatment, storage or disposal facility for such activities.

"It is important to note that these activities are not currently unregulated by any governmental agency. Rather, these activities would continue to be regulated by the local Air Pollution Control District and Regional Water Board. The activities also are part of the Spill Prevention Program and Countermeasures Plans, and the business plans submitted pursuant to Chapter 6.95 of the Health and Safety Code."

Comment response: See response to comment T29.

**Comment AG-3 - Section 66261, Appendix X**

Commentor - American Independent Refiners Association

Comment summary: "Article 9 of Chapter 30 of the existing Title 22, California Code of Regulations, lists chemical names and common names for waste materials which, if hazardous, will be deemed to be a hazardous waste. (Title 22, California Code of Regulations, section 66680(d) and (e).) These lists have no real purpose since materials which are not listed may be hazardous wastes anyway and just because a material contains something which is listed does not mean it is a hazardous waste.

In California, there is no such thing as a "listed waste" like the wastes listed in Title 40, CFR Part 261. The presence of the lists in Title 22 are therefore unnecessary and confusing. The Department, other agencies and generators would be best served if this list were eliminated. Such elimination would not in any way restrict the Department's activities, but would make interpreting the regulations clearer."

Comment response: See response to Comment T-1.7, section 66261, Appendix X.

**Comment AH1 - Section 66260.10**

Commentor AH - Chemical Waste Management, Inc.

Comment: "Section 66260.10: "Non-RCRA Hazardous Waste"

The Department requires a "demonstration" for categorizing a waste as non-RCRA in this definition but provides no explanation or mechanism. It is recommended that the Department change this to allow the generator to determine the correct category for his/her waste in accordance with the self-certification process."

Comment response: The Department is accommodating this comment.

**Comment AH2 - Section 66260.10**

Commentor AH - Chemical Waste Management, Inc.

Comment: "There are two definitions given for 'acute Inhalation LC/50'. One seems to be the definition for 'Acute Inhalation LC/LO'."

Comment Response: The commentor is correct in that one of these definitions is for "Acute Inhalation LC/LO". However, this error appeared only in the working copy of the regulations and is correct in the proposed text.

**Comment AH3 - Section 66260.10**

Commentor AH - Chemical Waste Management Inc.

Synopsis of Comment: In the definition of "boiler", please clarify the meaning of "...one manufactured or assembled unit."

Comment response: The Department cannot accommodate this commentor. The Department feels that this statement clearly tells the reader that a boiler cannot be a collection of separate units such as a fire box followed by a separate primary energy recovery device. The definition then goes on to state that a unit is not of integral design if the combustion chamber and the primary energy recovery device are connected by ducts carrying flue gas. This statement clarifies the requirement that the unit be one manufactured or assembled unit by excluding those units which are not physically joined by other than flue ducting; thus, units connected by more than flue ducting fit this definition. Thus, this definition clarifies the meaning of "...one manufactured or assembled unit" in the sentences which follow and needs no further elaboration. Note also that this definition is verbatim federal language and further discussion of this topic is found in the January 4, 1985, Federal Register.

**Comment AH4.1 - Section 66260.10**

Commentor AH - Chemical Waste Management

Comment summary: This definition would create a period of time between completion of closure and the beginning of post-closure where the level of general facility standards and monitoring would have to be maintained.

Comment response: This is incorrect. Per title 22, section 67013, a facility has not completed "closure" until the Department has certified it closed. The facility would be able to begin post-closure operations and standards immediately following the Department's certification of closure, provided the financial mechanism for post-closure is fully funded.

**Comment AH4.2 - Section 66260.10**

Commentor AH - Chemical Waste Management

Comment summary: The commentor requests that from the definition of "Closed Portion", the requirement for the Department to release the owner/operator from the financial assurance requirements to qualify for post-closure be eliminated, as it will create an unreasonable economic burden on the facility with no discernible environmental benefit.

Comment response: This proposed definition of "closed portion" embodies requirements to conform with the requirements for closure set forth in sections 66264.143(i) and 66265.143(i) of the proposed regulations. The provisions of these referenced sections have been merged from 40 CFR sections 264.143(h) and 265.143(g) in order to achieve level of stringency in the federal regulations. Therefore, the concern of this comment was not accommodated.

**Comment AH5 - Section 66260.10**

Commentor AH - Chemical Waste Management Inc.

Synopsis of Comment: Delete the inclusion of EPA in this definition. Make all designations of EPA specific within the regulations.

Comment response: The Department agrees that "Department" means the Department and "USEPA" means the USEPA. The Department is changing this definition to state that "Department" means "...the State Department of Health Services". It is further adding a sentence which reads: "In some instances, however, the USEPA retains authority to take certain actions after the State becomes authorized pursuant to 40 CFR Part 271. In those instances, the USEPA can take actions reserved for the Department as specified in

40 CFR Part 271." The Department feels that it would add confusing verbiage to the regulations to delineate when the USEPA can take actions in the regulations. Actions by the USEPA after the State is authorized can be taken only for federally regulated wastes and only for provisions which are not broader in scope than existing federal law. Because a requirement of State law can be broader in scope whenever it addresses non-RCRA hazardous waste, each action the EPA could potentially take would be conditioned by an applicability statement adding another layer of confusing language to each provision. The Department feels that actions taken by the USEPA after authorization are taken under federal law to enforce selected parts of the State regulations. The reader must use federal law to determine which provisions are enforceable by the USEPA after the State is authorized. The second sentence of this definition is a good compromise alerting the regulated community that the EPA can take certain actions to enforce State law and specifying where those provisions of federal law which control the authorities of the EPA can be found.

**Comment AH6 - Section 66260.10**

Commentor AH - Chemical Waste Management Inc.

Comment: "Delete the inclusion of EPA Regional Administrator in this definition. Make all designations of the EPA Regional Administrator specific within the regulations."

Comment response: The Department agrees that "Director" means the Director of the Department and "USEPA Regional Administrator" means the USEPA Regional Administrator. The Department is changing this definition to state that "Director" means "...the Director of the State Department of Health Services". It is further adding a sentence which reads: "In some instances, however, the USEPA retains authority to take certain actions after the State becomes authorized pursuant to 40 CFR Part 271. In those instances, the USEPA Regional Administrator can take actions reserved for the Director as specified in 40 CFR Part 271." The Department feels that it would add confusing verbiage to the regulations to delineate when the USEPA can take actions in the regulations. Actions by the USEPA after the State is authorized can be taken only for federally regulated wastes and only for provisions which are not broader in scope than existing federal law. Because a requirement of State law can be broader in scope whenever it addresses non-RCRA hazardous waste, each action the EPA could potentially take would be conditioned by an applicability statement adding another layer of confusing language to each provision. The Department feels that actions taken by the USEPA after authorization are taken under federal law to enforce selected parts of the State regulations. The reader must use federal law to determine which provisions are enforceable by the USEPA after the State is authorized. The second sentence of this definition is a good compromise alerting the regulated community that the EPA can take certain actions to enforce State law and specifying where

those provisions of federal law which control the authorities of the EPA can be found.

**Comment AH7 - Section 66260.10**

Commentor AH - Chemical Waste Management Inc.

Comment: "Section 66260.10: "Halogenated Organic Compound"

Contrary to the reference in this definition, there is no appendix III to Chapter 10."

Comment response: The Department is changing the incorrect reference in this definition to the proper reference, Appendix III to Chapter 18.

**Comment AH8 - Section 66260.10**

Commentor AH - Chemical Waste Management Inc.

Comment: "This definition is also so broad it renders the concept meaningless. Since a 'biological receptor' (animal? plant?) can potentially be anywhere on the planet, and since any receptor can conceivably come into contact "in the future" with contaminants, a "point of exposure" can be anywhere on the face of the earth. Is this what the Department means by this definition? Suggested alternative: 'the point at which a biological receptor comes in contact with contaminants that may pose a risk to its health.' "

Comment response: For the sake of clarity, those sections using the term "point of exposure" have been rewritten, and the definition has been deleted from the proposed regulations. Section 66264.94(f) has been modified as follows: "(f) For ground water, in evaluating risk pursuant to subsection ~~(c)(4)~~ (d) of this section to any biological receptor, the ~~point of exposure shall be~~ point of exposure shall be ~~evaluated as if exposure would occur at the point of compliance.~~ (Note: In an effort to clarify the requirements for concentration limits greater than background section 66264.94 has been extensively modified and reorganized.)

**Comment AH9 - Section 66260.10**

Commentor: AH - Chemical Waste Management, Inc.

Comment summary: The term "generator" is a term of art. Insertion of a definition of "producer" in the regulations is confusing and unnecessary. Is a "producer" the same as a "generator"? If so, there is no need to have two terms of art for the same concept. The "producer" definition should be deleted.

Comment response: The Department cannot completely accommodate this comment. The two terms are, indeed, synonymous. However, the term "producer" is used through out those Health and Safety Code sections pertinent to hazardous waste. To remove this definition would make the relationship between regulations referring to "generators" and statutes referring to "producers" unclear. To emphasize that these terms are synonymous, the Department is replacing the definition of "producer" with the phrase "See generator" and is co-defining the term "producer" with the term "generator".

**Comment AH10 - Section 66260.10**

Commentor - Chemical Waste Management

Comment summary: "The Department's new definition of "reactive" suffers from the same flaws as its definition of "ignitable." The definition, as written, can be interpreted to include virtually any hazardous (or even non-hazardous) waste, because most such materials can have "chemical activity." This definition, which conflicts with section 66261.23, will create confusion in the regulated community and should be deleted."

Comment response: The definition of "reactive" is not new. The definition exists in the current regulations in title 22, Cal. Code Regs., section 66168 verbatim. Reactive is defined as possessing chemical activity such that it poses a hazard to human health or the environment. Chemical activity alone would not warrant defining a waste as reactive. The Department disagrees that title 22, Cal. Code Regs., section 66261.23 conflicts with the definition. Title 22, Cal. Code Regs., section 66261.23 should be used in conjunction with the definition to specifically determine if a waste exhibits the characteristic of reactivity. The definition in title 22, Cal. Code Regs., section 66260.10 broadly identifies that which the Department considers reactive. Title 22, Cal. Code Regs., section 66261.23 specifically identifies which properties when exhibited by a waste cause it to be classified as reactive waste. The modification is rejected.

**Comment AH11 - Section 66260.10**

Commentor - Chemical Waste Management, Inc.

Comment summary: This commentor recommends that the definition of "restricted hazardous wastes" be modified to conform to the federal version or deleted because the definition in the proposed regulation covers only California list wastes and is therefore limited, unlike the federal definition which covers all categories of wastes that are prohibited from land disposal including the California list wastes.

Comment response: The definition of restricted hazardous wastes in the proposed regulations was taken from the Health and Safety Code section 25122.7. The Department disagrees with the commentor's conclusion that the definition is inconsistent with the federal term. Although Subsection (a) of the proposed section is limited to California list wastes, subsection (b) covers broad types of wastes other than those listed in subsection (a). Subsection (b) is intended to include all wastes restricted under federal law, as explained in 53 Fed. Reg. 31,208 (August 17, 1988). Note that pursuant to section 25179.6 of the Health and Safety Code, any wastes that are prohibited from land disposal (restricted) by the EPA are also restricted in California. In addition, subsection (b) includes all non-RCRA wastes that may be restricted by the Department by regulation.

**Comment AH12 - Section 66260.10**

Commentor AH - Chemical Waste Management Inc.

Comment: "The SOR states that this definition comes from 40 CFR 270.2. The definition given does not coincide with the 40 CFR 270.2 definition. Change the definition to match the 40 CFR 270.2 definition."

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

**Comment AH13B**

Commentor AH - Chemical Waste Management Inc.

Comment AH13 - "See Section 66263.18"

Comment Response: See response to comment T20

**Comment AH14 - 66260.200**

Commentor: AH - Chemical Waste Management, Inc.

Comment summary: The requirement that a waste generator applying for a nonhazardous classification concurrence or permission to manage a hazardous waste as if it were nonhazardous supply and maintain samples of that waste if requested within 60 days is wrong. A 60 day old sample may no longer be a useable sample due to the passage of time.

Comment response: The Department is accommodating this comment. The Department is adding a sentence requiring the samples maintained by the petitioner to meet good laboratory practice

requirements for sample retention times and sample preservation. This subsection is also being changed to clarify the requirement that the petitioner retain samples for at least 60 days.

**Comment AH15 - Section 66261.1(b)(2)(A)B**

Commentor AH - Chemical Waste Management Inc.

Comment: "There is no basis for classifying a material as hazardous waste based on the Department's belief. This is separate from the Department's inspection and enforcement authority which allows them to take samples and perform analyses when they "believe" a material is hazardous. This section contradicts the regulatory mechanisms for classifying hazardous waste and should be removed from the regulations."

Comment response: The Department is accommodating this comment by limiting the authority of this section to classify waste as hazardous based on the Department's belief to the inspection and enforcement authorities required for RCRA authorization as mentioned by the commentor.

**Comment AH16 - Section 66261.4**

Commentor AH - Chemical Waste Management Inc.

Comment: "For clarity and consistency, all of the materials which are excluded under the definition of waste should be listed in this section. This would include exemptions listed in the following sections of the Health and Safety Code: 25143.2(b), 25143.2(d), 25143.2(e), and 25143 and referenced in the following sections: 66260.2(a), 66261.3(a)(1), 66261.3(b), 66261.20(a), 66261.11."

Comment response: The Department cannot accommodate this comment. Any regulations adopted by the Department pursuant to Health and Safety Code section 25159.5 are exempted from review under the nonduplication standard by Health and Safety Code section 25159. This exemption was necessary to incorporate the large volume of federal regulations necessary to become authorized pursuant to 40 CFR Part 271. The Department does not, however, intent to use this exemption to include large portions of State statute in the regulations contrary to the normal practice in the California Code of Regulations. State statute has only been duplicated where that duplication was necessary for clarity. The commentor has stated that inclusion of these exemptions is a clarity issue. The Department feels that it has given the regulated community adequate warning that the statutory exemptions exist by referring to them in the regulations. Duplication of the text of these exemptions might make the regulations immediately clearer but would lead to serious clarity problems later on. The statutory provisions referred to above were greatly changed in the 1988 legislative session by AB 4636 and are being considered for change again in the 1989

legislative session by AB 1847. The time lag between the effective date of any changes to the above referenced statutory provisions and follow-up changes to the regulations would create a clarity problem of serious proportions.

**Comment AH17 - Section 66262.10(h)**

Commentor AH - Chemical Waste Management, Inc.

Comment summary, AH 17.1: The commentor states that proposed section 66261.4(b) contradicts proposed section 66262(h). The commentator states that proposed section 66262.10 (h) states that Household Hazardous Waste (HHW) is not hazardous waste. Currently the state regulations (section 66470) exempts HHW generators from the generator requirements only.

Comment response, AH17.1: The Department has deleted the proposed new language and has inserted the regulation language as it exists in the current State regulations. The state regulation does not exempt HHW from classification as a hazardous waste as do the federal regulations. However, the state regulations exclude HHW from the generator requirements.

Comment summary, AH17.2: The commentor states that there is currently an unwritten state policy requiring collectors of HHW to obtain an identification number and to manifest the waste properly. Thus under current state law, a HHW generator is not required to manage its waste as hazardous, but yet if it is collected it must be so managed.

Comment response, AH17.2: The Department does not have such an unwritten policy that requires homeowner to manage their HHW as a hazardous waste and thus obtain an identification number for the manifest document. Section 66470 excludes the homeowner from the generator requirements. However, once the HHW is removed from the residence by either the homeowner (and taken to a county HHW collection site) or by a licensed contractor it then becomes the responsibility of the county authorities or contractor to comply with the generator requirements.

Comment summary, AH17.3: The commentor recommends that HHW be classified as any non-RCRA (California only) hazardous waste under state law and made exempt from all hazardous waste regulations under federal law.

Comment response, AH17.3: This rulemaking is intended to conform state and federal hazardous waste regulations. Adoption of regulations beyond those contained in existing state law is beyond the scope of thus rulemaking.

Comment summary, AH17.4: The commentor states that land disposal restrictions cannot effectively be applied to households unless every individual in the State is required to complete manifests and land ban notification forms under 40 CFR 268.7 (a)(1). Further, the analytical costs for a collector to perform this task greatly exceeds the value of its services and would drive all such collectors out of business.

Comment response, AH17.4: Most HHW is disposed of at the county HHW collection sites. The majority of the waste collected is then Lab packed. The Health and Safety Code, section 25179.9 exempts Lab packs which contain waste that has not been restricted or prohibited by the Environmental Protection Agency from the Land Ban requirements.

Comment summary, AH17.5: The commentor states that by requiring HHW to be managed as hazardous wastes at least subjects the material to greater regulatory control.

Comment response, AH17.5: This rulemaking is intended to conform state and federal hazardous waste regulations. Adoption of regulations beyond those contained in existing state law is beyond the scope of this rulemaking.

Comment summary, AH17.6: The commentor recommends that a provision be added to this section about HHW which states that households may not knowingly dispose of hazardous waste in a non-hazardous waste landfill.

Comment response, AH17.6: This rulemaking is intended to conform state and federal hazardous waste regulations. Adoption of regulations beyond those contained in existing state law is beyond the scope of this rulemaking.

Comment summary, AH17.7: The commentor recommends that the Department encourage HHW collection programs because they help households perform their regulatory duty and aid in the protection of the environment.

Comment response, AH17.7: The Department has encourage HHW collections. The local authorities in counties throughout the State of California hold HHW collections days regularly as a service to promote public awareness.

#### **Comment AH18 - Section 66261.4**

Commentor AH - Chemical Waste Management Inc.

Comment: "The proposed regulations do not included the treatability sample exemption. This exemption should be included

in the regulations similar to 40 CFR 261.4(e) and (f). There is no discernible environmental benefits in subjecting laboratories and/or research facilities to the requirements of permitting or variance procedures as long as their handling of hazardous wastes pertains to scientific research."

Comment response: 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 AH19 - Section 66261.4**

Commentor AH - Chemical Waste Management Inc.

Comment: "Section 261.7: 'Empty Containers'

We disagree with the Department's refusal to adopt a corresponding provision to 40 CFR section 261.7. EPA's "empty container" rule was issued in response to numerous industry questions regarding the extent to which partially full, empty and cleaned containers are regulated under RCRA. See 45 Fed. Reg. 78,524 78,525 (Nov. 25, 1980). In setting guidelines for determining when a container that has held hazardous waste is "empty", EPA concluded that the small amount of hazardous waste remaining in an individual empty, unrinsed container does not pose a substantial threat to human health and the environment. Id. at 78, 525. EPA's "triple rinse" requirement was considered the most equitable solution because it greatly reduced the amount of residues remaining in an empty container, while also subjecting the rinsate to regulatory control. Id. at 78, 526.

Without an "empty container" rule, generators, as well as treatment, storage, and disposal facilities, are left in the very state of uncertainty that led EPA to promulgate section 261.7 in 1980. To what extent must a drum be emptied or cleaned before it

is no longer a hazardous waste? Must all emptied drums be shipped off-site with a manifest and handled as a hazardous waste? If so, must the drum be shipped to a designated facility for disposal? If the emptied drum is shipped to a drum reconditioner must it still be manifested as a hazardous waste? The Department leaves these questions unanswered by its deletion of 40 CFR section 66261.7. This provision is needed to give guidance to the regulated community concerning the practical problem of managing empty containers. We recommend that the Department adopt 40 CFR section 261.7 in its entirety."

Comment response: 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 Department disagrees with the commentor that small amounts of hazardous material remaining in unrinsed containers poses a negligible hazard. These residues, which can be up to 3% by weight of the contents of a drum, can total more than fourteen pounds discarded with each drum. The Department will not adopt standards in this rulemaking modifying the Department's understanding of existing law based on its analysis of existing law on containers (beyond the rinsing and nonhazardous disposal which it is proposing to allow for small containers) in this rulemaking.

However, the Department has studied the drum recycling and reconditioning industry in California and will commence rulemaking action soon to establish special standards for the drum recycling industry. Those standards are beyond the scope of this rulemaking.

The questions asked by the commentor can be answered in the light of the proposed regulations. A contaminated drum must be cleaned by an authorized drum recycler to be nonhazardous. Proposed section 66261.7 declares all contaminated containers to be hazardous wastes and allows on-site decontamination of only the small containers without authorization from the Department. Thus, all contaminated drums must be sent to a drum reconditioner authorized by the Department or to class I disposal using a manifest and a registered hazardous waste hauler. To classify a drum as nonhazardous, it must be reconditioned by cleaning.

**Comment AH20 - Section 66261.110 (b)**

Commentor - Chemical Waste Management

Comment summary: "This section states that the Department may classify a material as not extremely hazardous based on calculated toxicity using the equation in 66261.24(c). However, there is no formal mechanism defined for a generator to request the Department to perform this "declassification". It is recommended that this section be revised to allow a "self-declassification" mechanism in which the generator performs this calculation with associated recordkeeping requirements."

Comment response: The Department agrees with the commentor and has revised the language to accommodate this comment. Appendix X identifies chemicals which create a presumption that a waste is an extremely hazardous waste unless it does not exhibit any of the criteria set forth in title 22, Cal. Code Regs., section 66261.110 and title 22, Cal. Code Regs., section 66261.113.

**Comment AH21 - Section 66261.124**

Commentor - Chemical Waste Management

Comment summary: "This section should be modified to be similar to current section 66305 in providing a time frame for DOHS to request further information from the generator and making a determination as to whether the material can be classified as a special waste."

Comment response: The Department agrees with the commentor and has accommodated this comment by modifying the proposed regulations as set forth in title 22, Cal. Code Regs., section 66261.124(b) through (i).

**Comment AH22 - Section 66261.126 (c)**

Commentor - Chemical Waste Management

Comment summary: "This section refers to a "variance" under Health and Safety Code 25143.7. This section of the Health and Safety Code is not a variance, but an authorization for the disposal of asbestos. Please modify the language of this section to reflect this difference."

Comment response: The reference to Health and Safety Code section 25143.7 is correct. The reference to Health and Safety Code section 25143.7 in title 22, Cal. Code Regs., section 66261.126(c) was incorporated to reflect the current statutory authority which allows for asbestos containing waste to be disposed of at any landfill which has been issued waste discharge requirements by the regional water quality control board provided that the wastes are

handled and disposed of in accordance with the Toxic Substances Control Act and all applicable laws and regulations. Additionally, the reference to the Health and Safety Code section 25143.7 was incorporated to clarify that an owner and operator of a landfill disposal facility authorized to dispose of a special waste pursuant to a variance issued by the Department would be exempt from the requirements of closure and post closure and financial assurances even though the facility disposed of hazardous asbestos waste.

**Comment AH23 - Section 66261, Appendix I**

Commentor - Chemical Waste Management

Comment summary: "ASTM E-300 should be included as alternative for each category (it is an all inclusive document) and is being updated on a regular basis."

Comment response: Incorporation of ASTM E-300 is not within the scope of this rulemaking package. The Department incorporated the references in Appendix I as they were adopted by the EPA. ASTM E-300, "Standard Practice for Sampling Industrial Chemicals", has not been adopted by the EPA; therefore, the Department will not incorporate it into the State regulations. ASTM E-300 is not a compendium of the 5 ASTM methods currently in Appendix I, but rather it is a separate method that contains similar information already provided in the methods referenced in Appendix I. If incorporated by the Department, its use would be limited to non-RCRA hazardous waste classification purposes because it has not been formally adopted by the EPA. Adequate guidance is provided through the current references in Appendix I. If a generator believes that an alternative sampling method is more appropriate in terms of classification of a waste, the generator may request a variance pursuant to title 22, Cal. Code Regs., section 66260.21. The modification is rejected.

**Comment AH24 - Section 66261.24(a)(2)(A)**

Commentor - Chemical Waste Management

Comment summary: "\*\*\* "equals or exceeds 560 mg/l" should be "less than or equal to". Please review to see if this is correct."

Comment response: The commentor is referring to the footnote to Table II - List of Inorganic Persistent and Bioaccumulative Toxic Substances and Their Soluble Threshold Limit Concentration (STLC) and Total Threshold Limit Concentration (TTL) Values. As set forth in title 22, Cal. Code Regs., section 66261.24 (a)(2), a waste exhibits the characteristic of toxicity if the soluble concentration in milligrams per liter waste extract as determined using the Waste Extraction Test equals or exceeds its listed soluble threshold limit concentration. (emphasis added).

Therefore, the phrase "equals or exceeds 560 mg/l" is correct. The purpose of the footnote is to clarify for generators when a waste containing chromium and/or chromium III compounds is identified as a non-RCRA hazardous waste rather than a RCRA hazardous waste. The footnote sets forth the procedure to follow in order to determine that a presumptive RCRA characteristic waste is a non-RCRA hazardous waste. A waste containing chromium would be a non-RCRA hazardous waste if the soluble chromium level equals or exceeds 560 mg/l as determined by using the Waste Extraction Test and the soluble chromium level is less than 5 mg/l as determined by using the Extraction Procedure Toxicity Test. No change in regulation is proposed based upon this comment.

#### Comments AH25 and AH26 - Section 66261, Appendix II

Commentor - Chemical Waste Management

Comment summary: "Need to address probability of SW-846 3rd edition, i.e., identify requirement as 2nd edition or most recent approved edition. 2nd edition needs drastic changes to be viable. 3rd edition is (hopefully) in the process of addressing that per CWM extensive comments.

The use of SW-846, 2nd edition for the analysis of metals using only the methods listed is very limiting. If the detection limit and accuracy levels are achievable using an alternate approved method, it shall be acceptable."

Comment response: Reference to the 2nd edition of SW-846 in title 22, Cal. Code Regs., section 66261, Appendix II, subdivision (b)(1) is necessary to provide the source document for the required digestion methods. Method 3060 is listed in the 2nd edition of SW-846 and is currently listed in title 22, Cal. Code Regs., section 66700(b)(1)(B) as the required digestion method for hexavalent chromium. Method 3060 is not listed in the 3rd edition of SW-846. Therefore, to conform to the current level of stringency in State law, the 2nd edition of SW-846 must be listed as the reference document for both digestion methods, Method 3050 and Method 3060. The 3rd edition of SW-846 is referenced in Table 4 of Appendix III of Chapter 11 which lists the analysis methods to be used to determine the concentrations for persistent and bioaccumulative toxic substances. If a generator wishes to use an alternative testing method, the generator may request a variance pursuant to title 22, Cal. Code Regs., section 66260.21.

#### Comment AH27 - Section 66262.22

Commentor AH - Chemical Waste Management, Inc.

Comment summary: The commentor states that this proposed section should describe in detail how the copies of the manifest should be distributed.

Comment response: Currently, the State's manifest document contains instructions as to the distribution. The proposed regulations in section 66262.22 set forth how the State's manifest is to be distributed. The State is adopting the corresponding federal language (40 CFR section 262.22) without changes. Major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking.

Comment summary, AH27.2: The commentor states that this proposed section should describe in detail how the distributed manifest copies are handled from that point.

Comment response, AH27.2: Currently, the State's manifest document and the regulations set forth how the manifest copies should be handled from that point. Major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking.

Comment summary, AH27.3: The commentor states that this proposed section should also state that additional transporters will receive a copy of the manifest.

Comment response, AH27.3: Currently, the State's regulations for transporters of hazardous waste set forth the requirement that additional transporters shall receive a copy of the manifest. This is found in proposed section 66263.20(f).

#### Comment AH28 - Sections 66260.10 and 66263.18

Bold capital letters **A through G** have been inserted into this comment in order to provide an easy coding system for the response.

Commentor AH - Chemical Waste Management, Inc

#### Comment:

"DHS has gone to great lengths to bring 'transfer facilities' into the regulatory program but has not done enough to harmonize the new provisions with existing ones, or sufficiently defined the scope of 'transfer' activities. This section of the comments addresses the most serious flaws in the new regulations.

As a threshold matter, it is uncertain what activities the Department is attempting to regulate, and where those activities may occur. [A] Under proposed 66263.18, it appears that only one activity is exempted from permit requirements: the transfer from one vehicle to another of containerized hazardous wastes, provided the transfer occurs within 144 hours. It further appears that the storage of containerized hazardous waste, presumably on a transport vehicle, is also exempt from permitting requirements.

[B] Under this reading of section 66263.18, any other handling of containerized hazardous wastes, including repackaging, overpacking,

pumping from one vehicle to another, and possibly even transferring a container from one truck to a containment area and then to another truck, requires a permit irrespective of how long the transfer activity takes. We question whether the Department intended the class of exempted transfer activities to be this narrow, and in fact, other proposed regulations seem to bring the validity of this narrow interpretation onto question. For example, 'transfer facility' is defined to mean 'any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous wastes are held and/or transferred during the normal course of transportation.' section 66260.10 [C] This definition implies that an exempted transfer can occur not only between trucks, but also onto a loading dock, and into a storage area. 'Transfer' is defined to include more than just loading and unloading, but also 'pumping and packaging.'

[D] If the Department intends only for transfers of containers from one truck to another to be exempted, and all other activities to require a permit, we believe it has drawn the exemption too narrowly. Some concrete examples may illustrate this point. Suppose a generator pumps hazardous wastes from on-site storage tank to a tank truck that will be used to transport the waste off-site. Is this transfer subject to permitting requirements? In our opinion, this transfer is exempt because it is incidental to authorized generator activities under the 90-day accumulation period.

[E] Suppose the tanker truck than travels to a permitted off-site treatment and disposal facility, and pumps the liquid hazardous waste into a stationary tank. Must the off-site disposal facility seek a permit modification to authorize this transfer activity? In our opinion, this transfer activity is also exempt from additional permitting requirements because the transfer is incidental to a permitted storage and treatment operation. Any additional permitting would be superfluous.

In light of these examples, we suggest that the Department make the following clarifications to the section 66263.18:

[F] (1) Add the following clause to the end of section 66263.18(a), 'or containers are transferred from one vehicle to a contained area and then to another vehicle.'

[G] (2) Add the following provision: '(d) Transfers of waste occurring as a necessary part of waste management activities at permitted facilities, or on-site at generator facilities so not require additional permit under this section.'"

Response:

A. The commentor is correct in their interpretation of which activities are allowed at transfer facilities under this section.

B. Yes, under this reading any other handling cannot take place at exempted transfer facilities.

C. Transfer facility definition is a location definition and not an activity definition. Transfer definition is an activity definition and used alone is not intended to be modified by the term exemption. The transfer facility exemption is not exempting a "transfer" activity, but is exempting a "location" from permit requirements and land-ban requirements only if certain handling practices are maintained.

D and E. The transfer facility exemption is intended to address the incidental storage of manifested hazardous waste shipments during the normal course of transportation (transportation mode) from a generation location to a designated facility. This handling and storage exemption is not applicable during the pre-transport phase or the post-transport phase of hazardous waste shipments. The packaging of hazardous waste prior to off-site shipment is a generator's requirement and is specified on section 66262.30 which incorporates the requirements for packaging of the Federal Department of Transportation (DOT).

F. For suggestion #1: Handling is only allowed between one vehicle and another, not into a non-specific contained area. No standards for these contained areas are provided for in existing or proposed regulations and the adoption of these standards is beyond the scope of this rulemaking effort.)

G. For suggestion #2: The introductory paragraph has been changed to read "A transfer facility is not subject to the requirements of chapters ... regarding a permit or storage when, during the normal course of transportation..." With the changes made to this paragraph to clarify that this exemption is only applicable in the transportation mode of hazardous waste shipments, this suggested language is not necessary.

Comment AH-29 - Section 66263.11 (a)(2)(A)

Commentor AH - Chemical Waste Management, Inc

Comment: "The requirement for maintaining a copy of the insurance policy at the hauler's principal place of business is not necessary. The recommendation requirement would be to make a copy available upon request."

Comment response: The Department has special authority over a licensee including the ability to demand and review records. If the Department does not have a standard which specifies where the critical records are (i.e., the insurance policy) the Department would have great difficulty retrieving those records as needed. Without this requirement, the timely request and review of the records would not be maintained and could jeopardize public health and safety.

**Comment AH-30 - Section 66263.11(a)(3)**

Commentor AH - Chemical Waste Management, Inc

Comment: "The Department should allow some form of reciprocity in its inspection requirements. If all 50 states required an equivalent inspection there would be little time left for hauling. Also, this is a potential conflict with U.S. Department of Transportation regulations."

Comment response: Regarding the first comment, reciprocity is a good idea but requires multi-state agreements which is beyond the scope of this rulemaking effort. In addition, current statutes do not provide the Department with the authority to promulgate regulations based on reciprocity. Regarding the second comment, the Department has reviewed the U.S. Department of Transportation regulations and has not identified any specific conflicts.

**Comment AH-31 - Section 66263.12**

Commentor AH - Chemical Waste Management, Inc

Comment: "The Department should note that the trend is moving towards two-year registration periods in many states with an accompanying monetary savings."

Comment response: This comment has merit. However, it is beyond the scope of these immediate regulation effort. In order for the Department to ensure that the public health and safety and the environment are adequately protected, the Department needs mechanisms to monitor operations, address changes, ownership status, vehicle and container conditions, environmental compliance records, etc. The Department will examine this comment as a future project for consideration in its registration program.

**Comment AH-32 - Section 66263.15 (a)(3)**

Commentor AH - Chemical Waste Management, Inc

Comment: "The Department should note that this requirement is in direct conflict with 49 CFR 171.3(e)(2)."

Comment response: The Department researched this federal citation and could not find this citation in the latest version of 49 CFR. After further checking with the commentor, the correct cite is 49 CFR 171.3(c)(2). The requirement of this subsection is an additional requirement and separate from the requirement to notify the U.S. Department of Transportation in cases of hazardous waste discharge during transport as specified in 40 CFR section 263.30, which specifically references the reporting requirements of 49 CFR sections 171.15 and 171.16 and 33 CFR section 153.203. Section

66263.30 of these proposed regulations is equivalent to 40 CFR section 263.30 and references the same reporting requirements of 49 CFR and 33 CFR.

**Comment AH-33 - Section 66263.20(f)**

Commentor AH - Chemical Waste Management, Inc

Comment: "The requirement to submit the manifest copy should take into account that some loads involving rail transport can take up to 3 weeks to complete. The recommended requirement would be 15 days after completion of transportation."

Comment response: This subsection has been changed to clarify that the 15 day submittal requirement means 15 days after the waste has been received by the designated facility on the manifest, as the "15 days after completion of transportation" commentor statement has requested. The only way that a transporter can ensure that the generator, transporter, and designated facility have signed the manifest, as "so transported" implies in the initial text, is to deliver the shipment to the designated facility. The completed manifest, including all signatures, is then submitted to the Department by the transporter within 15 days.

**Comment AH34 - Section 66264.25(a)**

Commentor AH - Chemical Waste Management

Comment summary: Section 66264.25(a) requires the facilities subject to Chapter 14 and all cover systems and drainage control systems required by Chapter 14 to be designed to function without failure when subjected to capacity, hydrostatic and hydrodynamic loads resulting from a 24 hour probable maximum precipitation storm. The comment recommends that this standard be deleted and replaced with a 25 year - 24 hour precipitation standard. The comment particularly objects to application of the probable maximum precipitation (PMP) standard to the design of drainage facilities and cover systems.

Comment response: The Department cannot accommodate this comment. The proposed regulation has been taken directly from the current title 22, California Code of Regulations requirement (section 67108). If this requirement is changed as suggested by the commentor, this will make the proposed regulation less stringent than the current state regulation. The intent of Resource Conservation and Recovery Act (RCRA) authorization is not to repeal current regulations nor to adopt RCRA, but to adopt the more stringent of these regulations.

Comment AH35 - Section 66264.71

Commentor AH - Chemical Waste Management

Comment summary, AH35.1: The commentor states that the Department's proposed regulations should provide guidance on a question left open in both state and federal regulations: What paperwork should accompany a rejected load of hazardous waste back to the generator?

Comment response, AH35.1: The Department agrees that guidance to owners concerning how to deal with rejected loads of hazardous waste would be useful. However, major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking. Thus, the Department cannot accommodate this comment.

The Department does expect to develop a policy and procedure that addresses the commentor's concerns soon. During the interim, an owner who accepts a load of hazardous waste which he or she cannot store, treat, or dispose of at the facility can assure compliance with manifesting requirements by filling out a new manifest and directing the waste to a facility which is permitted to receive the waste.

Comment summary, AH35.2: The commentor recommends that a new regulation be added that provides guidance for rejected loads of hazardous waste.

Comment response, AH35.2: The Department agrees that guidance to owners concerning how to deal with rejected loads of hazardous waste would be useful. However, major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking. Thus, the Department cannot accommodate this comment.

The Department does expect to develop a policy and procedure that addresses the commentor's concerns soon. During the interim, an owner who accepts a load of hazardous waste which he or she cannot store, treat, or dispose of at the facility can assure compliance with manifesting requirements by filling out a new manifest and directing the waste to a facility which is permitted to receive the waste.

Comment summary, AH35.3: The commentor states that because a generator is not a permitted treatment, storage, or disposal facility it would seem inappropriate for a new manifest to be prepared showing the generator as the "designated facility." The commentor, therefore, recommends that a new regulation be added that specifies the rejected shipment of hazardous waste shall be returned to the generator with a copy of the original manifest, which will contain a notation explaining the reason for the rejection.

Comment response, AH35.3: The Department agrees that guidance to owners concerning how to deal with rejected loads of hazardous waste would be useful. However, major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking. Thus, the Department cannot accommodate this comment.

The Department does expect to develop a policy and procedure that addresses the commentor's concerns soon. During the interim, an owner who accepts a load of hazardous waste which he or she cannot store, treat, or dispose of at the facility can assure compliance with manifesting requirements by filling out a new manifest and directing the waste to a facility which is permitted to receive the waste.

Comment summary, AH35.4: The commentor recommends that the Department issue a regulation which would set forth that rejected loads of hazardous waste shall be returned to the generator with a copy of the original manifest, containing a notation explaining the reason for the rejection.

Comment response, AH35.4: The Department agrees that guidance to owners concerning how to deal with rejected loads of hazardous waste would be useful. However, major changes other than those described in the statement of reasons of the proposed regulations are outside the scope of this rulemaking. Thus, the Department cannot accommodate this comment.

The Department does expect to develop a policy and procedure that addresses the commentor's concerns soon. During the interim, an owner who accepts a load of hazardous waste which he or she cannot store, treat, or dispose of at the facility can assure compliance with manifesting requirements by filling out a new manifest and directing the waste to a facility which is permitted to receive the waste.

**Comment AH36 - Article 6. Water Quality Monitoring and Response Programs for Permitted Facilities**

Commentor AH - Chemical Waste Management Inc.

Comment: "Attached herewith are CWM's comments on the revised Article 5 of Subchapter 15. Since these requirements are nearly identical to the Department's Article 6 requirements, we request that the Department review these comments and institute the suggested changes in the appropriate sections of CHAPTER 14 and CHAPTER 15."

Comment response: The Department and the State Water Resources Control Board (SWRCB) have jointly reviewed all comments submitted for proposed Article 6 of Chapters 14 and 15 of title 22 and for proposed Article 5 of Subchapter 15 and made appropriate changes to

the both sets of proposed regulations. The Department concurs with the responses drafted by SWRCB staff and is incorporating those responses into this rulemaking file.

**Comment AH37 - Sections 66264.112(b)(7) and 66265.112(b)(7)**

Commentor AH - Chemical Waste Management

Comment summary AH37.1: Chemical Waste Management (CWM) opposes retaining the existing Title 22, CCR requirement on "expected year of closure" in the proposed regulations.

Comment response: Major changes other than those described in Statement of Reasons of the proposed regulations are outside the scope of this rulemaking. Therefore, this regulation cannot be reexamined in this rulemaking.

Comment AH37.2: CWM concurs with Environmental Protection Agency that identification of the closure year is essential for interim status facilities without approved closure plans as well as for those facilities using trust funds as their exclusive means of financial assurance. However, CWM fails to find a rationale, nor has the Department provided one, for specifying the expected year of closure in all closure plans.

Comment response: Please see response to comment AH37.1 above. In addition, the Department has noted your comment and expects to focus on this issue in a future rulemaking.

Comment summary, AH37.3: Since permits are issued for no more than five years for facilities having projected operating lives of twenty to fifty years, the estimation of a closure year appears merely conjectural, if not irrelevant. Furthermore, if a facility wants to change its expected year of closure it would have to go through permit modification process. Therefore, CWM recommends that DHS requirements conform with the federal regulations on when the expected year of closure should be specified in closure plans.

Comment response: The proposed subject regulation of the above referenced sections have been taken directly from the existing title 22, California Code of Regulations (CCR), section 67212(b)(4), which requires all facilities to include an estimate of the expected year of closure in their closure plan. This rulemaking is not intended to repeal current regulations nor to adopt Resource Conservation and Recovery Act (RCRA), but to adopt the more stringent of these regulations. Since the existing state regulation is more stringent than corresponding federal regulation, the Department cannot accommodate this comment. Please see response to comment AH37.2 above for the Department's future action on this comment.

**Comment AH38 - Sections 66264.114 and 66265.114**

Commentor AH - Chemical Waste Management

Comment AH38: The Department has muddied the intent of this section. As initially written by USEPA, the intent was to remind the regulated community that decontamination residues and other contaminated materials be properly disposed, and that in so doing, the owner/operator may become a hazardous waste generator.

Comment response: The language objected to by the comment is in current title 22, California Code of Regulations, and is more stringent than federal law because the language is more specific than federal law concerning the meaning of the word "decontaminated". The regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law. Therefore, the Department cannot accommodate this comment.

**Comment AH39 - Sections 66264.114 and 66265.114**

Commentor AH - Chemical Waste Management

Comment: "As proposed by the Department, the language change suggests a dramatic departure in two ways. First, it suggests that closure-by-removal is required. Second, it suggests that hazardous waste residues must be removed from contaminated soil. DHS's modification on this provision has made confusing a clear federal provision. CWM recommends that the clear federal RCRA language at 40 CFR sections 264.114 and 265.114 be used here."

Comment response: The language of the proposed sections 66264.114 and 66265.114 has been taken directly from the current title 22, California Code of Regulations and is more stringent than the corresponding federal regulation. The regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law. Therefore, this comment cannot be accommodated.

**Comment AH40 - Sections 66264.116 and 66265.116**

Commentor AH - Chemical Waste Management

Comment summary: The comment reflects the thought that the Department added language to the corresponding federal regulation in order to clarify the regulation. (The proposed regulation changes the term "surveyed benchmarks" which is in 40 Code of Federal Regulations to "surveyed vertical and horizontal benchmarks".) The comment asserts that the term "surveyed benchmarks" is not unclear.

Comment response: The Department cannot accommodate this comment. The Department points out that the term objected to, "surveyed vertical and horizontal benchmarks", is in current state regulation. (Title 22 California Code of Regulations, section 67219.) Retaining this current law in the proposed regulations is more specific than the corresponding federal regulation, and therefore more stringent. State regulations may be broader in scope or more stringent than federal law.

**Comment AH40A - Sections 66264.117 (f) and 66265.117 (f)**

Commentor AH - Chemical Waste Management

Comment AH40A.1: Post-closure use of property at land disposal facilities: As written, post-closure construction activities could be prohibited (except by variance) on the entire parcel of property rather than confining the prohibition at the land disposal units and ancillary support systems and operations.

Comment response: Proposed regulation (sections 66264.117(f) and 66265.117(f)) exists in current law (title 22, California Code of Regulations (CCR), section 67217(f)). Therefore, although the proposed regulation is more stringent than the corresponding federal requirement, it will not impact the regulated community. The regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law.

Comment AH40A.2: CWM is unaware of the procedures and standards for obtaining a variance from the Department in order to conduct post-closure construction.

Comment response: Post-closure construction at a facility property other than regulated hazardous waste units can be conducted by obtaining a variance pursuant to proposed sections 66264.117(d) and 66265.117(d). For obtaining such a variance please contact appropriate regional office of the Toxic Substances Control Program and request an "Application for Hazardous Waste Facility Permit Variance".

Comment AH40A.3: Is it necessary to obtain both a variance and prior written permission from the Department?

Comment response: There may be instances where it will be necessary to obtain both a variance and written permission. The facility may request the Department to specify in any variance granted whether or not additional written permission will be required for a specific construction activity.

Comment AH40A.4: Proposed sections 66264.117(f)/66265.117(f) suffers from two defects. First, they deny the owner/operator the right of enjoyment of his property unless a variance and written permission are granted. Second, a variance procedure does not exist. These defects raise due process concerns.

Recommendation: 1. The DHS modify the prohibition by limiting its applicability to those areas surveyed and described in the survey plat (section 66264.116) and post closure notice (section 66264.119) submitted to the local land use authority; and

2. the references to obtaining a variance be deleted.

Comment response: The Department cannot accommodate this comment because of the reasons specified in above responses.

**Comment AH41.1 - Section 66264.142(a)**

Commentor AH - Chemical Waste Management

Comment summary: "The proposed regulations which require annual submission of the closure cost estimate within sixty (60) days prior to the anniversary date of the instrument is both confusing and inconsistent with the intent of updating the financial instruments."

Comment response: The intent of this regulation is to ensure the financial mechanism provides for the most current closure cost estimate.

**Comment AH41.2 - Section 66264.142(a) and (b)**

Commentor AH - Chemical Waste Management

Comment summary: The regulation is confusing because "within sixty (60) days" is not consistently interpreted among regulators. If the instrument anniversary date is March 31, "within sixty (60) days" is sometime interpreted to mean "no later than" sixty (60) days before the anniversary date. Another interpretation is "anytime between January 31 and March 31".

Comment response: The term "within" simply means the cost estimate shall be adjusted no more than sixty (60) days before the anniversary date, and no more than thirty (30) days after the close of the firm's fiscal year. More specifically, if the closure cost estimate changes 20, 10, or 5 days before the annual submission, the annual submission must provide for the most current cost estimate.

**Comment AH41.3 - Section 66264.142(a) and (b)**

Commentor AH - Chemical Waste Management

Comment summary: "The requirement to update the estimate sixty (60) days prior to the anniversary date was intended as a reminder that sixty (60) days later, on the anniversary of the instrument, the value of the instrument would reflect an increase for inflation (if nothing else). It was intended to be a means to the end of adjusted assurance, not the end result itself."

Comment response: The intent of this regulation is to ensure the financial mechanism provides for the most current closure cost estimate. It was not intended to be a reminder of the anniversary date. The value of the instrument should reflect the increased cost estimate.

**Comment AH41.4 - Section 66264.142(a) and (b)**

Commentor AH - Chemical Waste Management

Comment summary: "Due to the time required to review and revise estimates, the estimates submitted in final form sixty (60) days before the instrument's anniversary date might result in estimates which are outdated before the increased financial assurance is updated."

Comment response: This comment will be accommodated by changing the regulation to require that the increased closure cost estimate be submitted simultaneously with the financial mechanism annual update. However, the regulation will still require that the adjustment for inflation be made no more than sixty (60) days before the anniversary date of the establishment of the financial mechanism(s), and no more than thirty (30) days after the close of the firm's fiscal year for owners or operators using the financial test.

**Comment AH41.5 - Section 66264.142(a) and (b)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor recommends the Department require the submission of the closure cost estimate update simultaneously with the renewal of the financial mechanism with evidence that the instrument has been renewed and the closure cost estimate adjusted for inflation.

Comment response: See response to comment AH41.4.

**Comment AH41.6 - Section 66264.142(a) and (b)**

Commentor AH - Chemical Waste Management

Comment summary: If required to submit an update sixty (60) days prior to the anniversary date of the financial mechanism (or thirty (30) days after close of the firm's fiscal year for those using the financial test) this may lead to an inaccurate picture of a facility's closure cost estimate.

Comment response: See response to comment AH41.4.

**Comment AH41.7 - Section 66264.142(a) and (b)**

Commentor AH - Chemical Waste Management

Comment summary: The estimate should be submitted simultaneously with evidence that the instrument has been renewed and adjusted for inflation.

Comment response: See response to comment AH41.4.

**Comment AH42.1 - Sections 66264.143(c)(5), 66264.143(d)(8),  
66264.145(b)(4)(B), 66264.145(c)(5)  
66264.145(d)(9), 66265.143(c)(8) and  
66265.145(c)(9)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor noted that the regulations are inconsistent regarding when financial instruments can be drawn upon. They are also inconsistent with the comparable provisions in the May 2, 1986, federal regulations which were specifically enacted in settlement of the Atlantic Cement Company, Inc. (ACCI) litigation.

Comment response: The terms of each financial instrument is specified in regulation. Each has its procedures for disbursement to an owner or operator, once it has been determined by the Department that closure of a facility was completed in accordance with an approved closure plan. Additionally, the regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law.

Comment AH42.2 - Sections 66264.143(c)(5), 66264.143(d)(8),  
66264.145(b)(4)(B), 66264.145(c)(5)  
66264.145(d)(9), 66265.143(c)(8) and  
66265.145(c)(9)

Commentor AH - Chemical Waste Management

Comment summary: The proposed interim status regulations are also inconsistent.

Comment response: See response to comment AH42.1

Comment AH42.3 - Sections 66264.143(c)(5), 66264.143(d)(8),  
66264.145(b)(4)(B), 66264.145(c)(5)  
66264.145(d)(9), 66265.143(c)(8) and  
66265.145(c)(9)

Commentor AH - Chemical Waste Management

Comment summary: This commentor recommends, for consistency, 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 authority currently exists in title 22, section 67006(e). If the Department determines a facility has not been closed properly and more funds are needed to do so, the Department is authorized to draw on the financial mechanism immediately, (prior to a lengthy litigation process) which reduces the risk of possible harm to the environment and public health, due to an inadequate closure.

Comment AH42.4 - Sections 66264.143(c)(5), 66264.143(d)(8),  
66264.145(b)(4)(B), 66264.145(c)(5)  
66264.145(d)(9), 66265.143(c)(8) and  
66265.145(c)(9)

Commentor AH - Chemical Waste Management

Comment summary: As written, the provisions raise serious questions regarding due process as to the owner/operator having the ability to appeal the Department's determinations.

Comment response: This provision does not hamper the owner's or operator's appeal process as there are appeal procedures already provided in state regulations under title 22, California Code of Regulations, section 66344. To reiterate a portion of comment response 3, the Department is authorized to draw on the financial mechanism immediately, (prior to a lengthy litigation process)

which reduces the risk of possible harm to the environment and public health, due to an inadequate closure.

**Comment AH43.1 - section 66264.143(e)(8)(C)**

Commentor AH - Chemical Waste Management

Comment summary: The Department has taken a dramatic and counter-productive step by proposing that termination of an insurance policy cannot occur if closure is ordered by any governmental agency other than the Department.

Comment response: See response to comment AH43.2

**Comment AH43.2 - Section 66264.143(e)(8)(C)**

Commentor AH - Chemical Waste Management

Comment summary: We know of no other state agency possessing such authority. Moreover, only the state legislature, it seems, can empower a state agency.

Comment response: In California, hazardous waste facilities are regulated by more than one governmental agency, including but not limited to the Air Resources Board and the Regional Water Quality Control Board. Therefore, if a facility violates provisions of another regulatory agency and closure is ordered, the facility is still liable to maintain closure insurance until the facility is deemed certified closed by the Department.

**Comment AH43.3 - Section 66264.143(e)(8)(C)**

Commentor AH - Chemical Waste Management

Comment summary: This approach is inconsistent with the termination provision of the other financial instruments, which are silent regarding the role of other governmental agencies.

Comment response: The termination process for this mechanism is different because the mechanism is different. This mechanism is an insurance policy which can be cancelled, the other mechanisms must have the Department's authorization prior to release of funds. Nonetheless, the Department oversees all closures of state regulated facilities and has the ultimate decision as to when and how a financial mechanism will be terminated.

**Comment AH44 - Section 66264.145(a)(10)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor recommends changing the wording in this section to read as follows: "at the time final closure occurs" or "at the time final closure commences" instead of "Before final post-closure occurs".

Comment response: This comment will not be accommodated. This language currently exists in title 22, section 67016(j). This language clarifies that if a facility closes before the end of the pay-in-period, the facility is still liable to fully fund the trust fund before post-closure begins.

**Comment AH45.1 - Sections 66264.143(i) and 66264.145(i)**

Commentor AH - Chemical Waste Management

Comment summary: These two sections are inconsistent with each other and with federal law. While section 66264.143(i) conforms with title 40, Code of Federal Regulations, section 264.143(h), section 66264.145(i) is different from 66264.143(i) and is inconsistent with the federal counterpart found at section 264.145(h).

Comment response: See comment response #2.

**Comment AH45.2 - Sections 66264.143(i) and 66264.145(i)**

Commentor AH - Chemical Waste Management

Comment summary: The regulation requires use of only a single mechanism for multiple facilities. "These two sections are inconsistent with each other and with federal law. Requiring use of only a single mechanism for multiple facilities obviously could not and would not apply to facilities outside California." Chemical Waste Management cannot conceive of a good reason to require use of only a single post-closure mechanism for multiple California facilities.

Comment response: This comment has been accommodated by deleting the word "single" and replacing the phrase "only one" with "one or more". The portion of section 66264.145(i) now reads:

"Use of a ~~single~~ financial mechanism for multiple facilities for post-closure care. An owner or operator may use ~~only one~~ one or more of the financial assurance mechanisms."

Section 66264.143(i) will also reflect the above change and both sections now conform with federal regulations.

**Comment AH45.3 - Sections 66264.143(i) and 66264.145(i)**

Commentor AH - Chemical Waste Management

Comment summary: The Department should "follow the example of the proposed changes to the liability coverage. If more than one instrument is used to provide liability coverage, the owner or operator must designate which coverage is primary and which is excess."

Comment response: The Department has the authority to draw on any one or all of the combined mechanisms, and does not wish to designate one mechanism as the primary coverage for closure and/or post-closure.

**Comment AH46 - Section 66264.145(j)(1)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor recommends changing the words "approved closure plan" to "approved post-closure plan".

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

**Comment AH47.1 - Sections 66264.145(j)(2) and 66264.147(a)(8)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor recommends sections 66264.143(j)(2) and 66264.145(j)(2) include the federal provision that the new owner or operator demonstrate compliance with the financial requirements within six (6) months after the date of the change in the ownership or operational control of the facility.

This fairly offers the opportunity to the prior owner/operator to terminate financial ties by enabling the Department to compel the new owner/operator to comply.

Comment response: This comment will not be accommodated. This language already exists in title 22, California Code of Regulations, section 67013(b). Further, the regulations are not required to be identical to federal law. State regulations may be broader in scope or more stringent than federal law.

**Comment AH47.2 - Sections 66264.145(j)(2) and 66264.147(a)(8)**

Commentor AH - Chemical Waste Management

Comment summary: The federal regulations were flawed in a number of respects. In these proposed regulations the Department has picked up the same flaws as are present in the federal regulations. The most problematic flaw relates to the notification of a claim against the owner/operator or instrument, found at section 66264.147(a), 66264.147(b), 66265.147(a) and 66265.147(b). As currently written, any time a claim is made, the Department must be notified. Because neither notification nor claim was defined in the regulations, it is unclear what has to be reported when.

Comment response: See response to comment AH47.3

**Comment AH47.3 - Sections 66264.145(j)(2) and 66264.147(a)(8)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor recommends that notification of a claim against the owner or operator of a hazardous waste facility be defined more clearly in section 66264.147 as follows:

An owner or operator shall notify the Regional Administrator in writing within thirty (30) days when:

(i) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in a(1) through a(6) of this section; or

(ii) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

Comment response: This comment has been accommodated by adding the language adopted by the Environmental Protection Agency regarding the Standards for Liability Coverage applicable to owners or operators of hazardous waste treatment storage, and disposal facilities.

The Environmental Protection Agency has determined that to ensure only valid claims are paid, the financial mechanisms must specify that before making payment the issuer must receive either: a certificate of valid claim signed by the third-party claimants and by the owner or operator; or a final court judgment.

Sections 66264.147(a)(8), 66265.147(a)(8), 66264.147(b)(8) and 66265.147(b)(8) will be modified to include the Environmental Protection Agency's justification for triggering a payment as shown above with the inclusion of an additional condition:

;and whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by subsections (a)(1) through (a)(7) of this section is reduced.

Sections 66264.147(a)(8), 66264.147(b)(8), 66265.147(a)(8), and 66265.147(b)(8) currently require the owner or operator to notify the Department within thirty (30) days whenever any of the above conditions arise.

**Comment AH48 - Sections 66264.147(g)(6) and 66264.147(g)(8)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor recommends these sections be amended to include language allowing use of the other mechanisms for liability coverage which was approved for use by the Environmental Protection Agency in September 1988.

Comment response: This comment has been accommodated by adding language to sections 66264.147(g)(6) and 66264.147(g)(8) which allows use of the other mechanisms in the event the financial test is no longer valid.

**Comment AH49.1 - Section 66264.151(d)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor recommends the Department reinsert the word "standby" in the wording for the letter of credit financial mechanism. The word "standby" in the letter of credit allows for a quicker processing time, as the other type of letter of credit available (the documentary letter of credit) requires more processing time.

Comment response: This comment has been accommodated by modifying the letter of credit language to include the word "standby" which already exists in current regulatory language, title 22, California Code of Regulation, section 67007.

**Comment AH49.2 - Section 66264.151(d)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor also recommends the Department retain the effective date as part of the letter of credit financial mechanism, as the issuance date and effective date are not always identical.

Comment response: This comment has been accommodated by including the effective date on the letter of credit, as often times the effective date and issuance date are different.

**Comment AH49.3 - Section 66264.151(d)**

Commentor AH - Chemical Waste Management

Comment summary: This commentor also recommends that the regulated community be allowed to secure a letter of credit through an issuing bank outside of California.

Comment response: This comment has been accommodated by deleting the word "California" and adding "(State)" to the phrase. Therefore, the phrase will read:

"We hereby agree with you that each draft drawn and presented to us at our above office in (City), (State) in compliance..."

**Comment AH49.4 - Section 66264.151(d)**

Commentor AH - Chemical Waste Management

Comment summary: The Department should consult Article 11 of the Uniform Customs and Practices.

Comment response: The Department has consulted Article 11 of the Uniform Customs and Practices Act. It was not the intention of the Department to limit the regulated community to California financial institutions.

**Comment AH50 - Section 66264.221(a)**

Commentor - Chemical Waste Management

Comment summary: The commentor recommends that this section be modified to require that the liner shall be constructed of materials that can prevent wastes from migrating out of the liner system during the active life of the facility.

Comment response: The Department cannot accommodate this comment because this section embodies requirements currently set forth in title 22, CCR, section 67281 and 40 CFR section 264.221. The migration of wastes into the liner is only allowed for those surface impoundments which were constructed before February 2, 1985, and which are closed according to section 66264.228(a)(1). Since surface impoundments constructed after February 2, 1985, must comply with the design and construction standards set forth in 66264.221(c), no modification to this subsection is necessary.

**Comment AH51.1 - Section 66264.221(c)**

Commentor - Chemical Waste Management

Comment summary: The commentor recommends that the phrase "...relative to the waste or leachate to be contained", be deleted because it is not necessary.

Comment response: The Department cannot accommodate this comment because this section embodies requirements currently found in title 22, CCR, section 67281. The Department has merged these provisions of existing State law into the text of 40 CFR section 264.221 in order to retain the level of stringency currently existing in State regulations. This requirement is necessary to ensure that containment features are designed and constructed to provide the maximum possible protection for the citizens and the environment of California.

**Comment AH51.2 - Section 66264.221(c)**

Commentor - Chemical Waste Management

Comment summary: The commentor also states that, "the requirement could be construed to mean that all permeability testing of the soil liner be conducted with waste or leachate as the permeant, which would be expensive and unnecessary once the compatibility of the soil to the waste or leachate has been demonstrated."

Comment response: As it is written, this regulation requires that leachate be used to determine permeability. The demonstration of compatibility as per 66264.221(a)(1) does not determine the permeability between the liner material and the waste or leachate to be contained. Because the lower liner must be constructed to contain a waste material and potential leachate, the permeability of the soil liner to leachate must be demonstrated.

This regulation contains requirements currently found in title 22, CCR, section 67281, and has been merged into the federal language contained in 40 CFR section 264.221 in order to maintain the stringency of the existing State regulation.

**Comment AH52 - section 66264.226 (c) (3)**

Commentor - Chemical Waste Management

Comment summary: The commentor recommends that this section be modified by deleting the word "landslide" and further defining the term "earthquake", so that acceptable design parameters for the dike can be estimated.

Comment response: The Department has partially accommodated this comment by clarifying the term, "earthquake", with the phrase "maximum credible earthquake". This change is consistent with other requirements in this Division, which use the term "maximum credible earthquake".

The commentor's recommendation that the term "landslide" be deleted cannot be accommodated. The commentor states that, "... a landslide is not a cause of forces on a dike, but rather an effect of forces that act upon it from an earthquake and gravity." Section 66264.226(c)(3) reads, "Will not fail due to external or internal forces from an earthquake or landslide." The mass of earth making up a landslide, impacting upon a dike, clearly creates an external force to which the dike must be able to withstand.

The language in this section contains requirements currently found in title 22, CCR, section 67286, which has been merged into the text of 40 CFR section 264.226 in order to maintain the stringency of existing California law.

**Comment AH53 - Section 66264.228(a)(2)(C)1**

Commentor - Chemical Waste Management

Comment summary: The commentor recommends that the requirement to prevent the downward entry of water into a closed impoundment throughout a period of 100 years be deleted because its implementation would be meaningless, due to the lack of recognized modeling on downward entry of water through a cover system, and the number of attenuating factors and assumptions that would be necessary to perform the proper calculations which the commentor does not believe exist.

Comment response: The commentor's suggestion cannot be accommodated because this section contains requirements currently set forth in title 22, CCR, section 67288. The Department has merged these provisions of existing State law into the text of 40 CFR section 264.228 in order to retain the level of stringency currently found in existing State regulations.

**Comment AH54.1 - Section 66264.228(b)(3)**

Commentor - Chemical Waste Management

Comment summary: The commentor suggests that the phrase, "...which also serves as a leak detection system", be deleted from this subsection. The commentor argues:

"However, LCRS's (Leachate Collection and Removal Systems) collect leachate; they do not detect leaks. For example, the primary LCRS of a landfill directly overlies all of the liners. It collects rainwater and any liquid compacted out of the waste. It has absolutely no connection whatsoever to leak detection."

Comment response: This comment cannot be accommodated because this section contains requirements currently found in title 22, CCR, section 67288. These provisions of existing State law have been merged into the text of 40 CFR section 264.228 in order to maintain the stringency of the current regulations.

The commentor's argument concerning the function of LCRS's at landfills has no relevance with regard to LCRS's for surface impoundments due to the differences in design and construction standards.

Also see response to comment AH54.2.

**Comment AH54.2 - Section 66264.228(b)(3)**

Commentor - Chemical Waste Management

Comment summary: The commentor states that, "Also, the 228 (d) language is ambiguous, because, as written, a TSDF would only have to notify the Department if the TSDF determined that the leachate actually leaked into the LCRS. If the leachate naturally flowed into the LCRS, no notification is required.

Comment response: The language contained in section 66264.228(d) is not ambiguous. The design requirements contained in section 66264.221(c) state:

"...shall install two or more liners and a leachate collection system between such liners."

and;

"The requirement for the installation of two or more liners in this paragraph may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period),..." (emphasis added).

If the top liner must be constructed to prevent liquids from migrating into it, any liquids which might be found in the LCRS of a surface impoundment would indicate migration through the top liner (a leak), not "natural flow". Therefore, the LCRS does serve as a leak detection system.

**Comment AH55 - Section 66264.228(d)**

Commentor - Chemical Waste Management

Comment summary: The commentor states that existing experience and engineering calculations show that small quantities of fluids may be present in leak detection systems well after closure. The commentor suggests that instead of notifying the Department if liquids are found in the leak detection system, that an acceptable rate of fluid collection in the secondary leachate collection system could be defined by the owner/operator based on the design of the system. Any fluid collection lower than this defined rate should be considered acceptable and should not initiate any notification action.

Comment response: This comment cannot be accommodated because, as explained in the response to Comment AH54.2, any liquids detected in the LCRS beneath a surface impoundment would be due to leakage resulting from the failure of the top liner. The argument for acceptable rates of leachate collection may be applicable to landfills, but not to surface impoundments, which are constructed to different standards.

**Comment AH56 - Section 66264.228(e)(1)**

Commentor - Chemical Waste Management

Comment summary: The commentor states that this requirement is overly broad and should be revised to read, "The unit shall be compacted as necessary before any portion of the final cover is installed."

Comment response: This comment cannot be accommodated because this section contains requirements currently contained in title 22, CCR, section 67288. The Department has merged these provisions of existing State law into the text of 40 CFR section 264.228 in order to retain the level of stringency currently found in existing State law.

As it is currently written, this subsection does not preclude the permit holder from demonstrating to the Department that certain areas already meet the compaction requirements, and therefore do not need to be compacted further.

**Comment AH57 - Section 66264.228(e)(4)**

Commentor - Chemical Waste Management

Comment summary: The commentor states that this section needs to be revised to recognize that the foundation layer may consist of "soil, contaminated soil, incinerator ash, or other waste materials, provided that such materials have appropriate engineering properties to be used for a foundation layer. (See 23 CCR, 2581 (a) (1))."

Comment response: No changes to this section are necessary since these regulations do not preclude the use of soil, contaminated soil, incinerator ash, or other waste materials for the foundation layer, provided that such materials have appropriate engineering properties, as provided in title 23, CCR, section 2581(a)(1).

**Comment AH58.1 - Section 66264.228(e)(5)**

Commentor - Chemical Waste Management

Comment summary: The commentor suggests that the requirement that the cover of a closed unit "prevent the downward entry of water into the foundation for a period of at least 100 years" be deleted.

Comment response: (1) See response to Comment AH53.

**Comment AH58.2 - Section 66264.228(e)(5)**

Commentor - Chemical Waste Management

Comment summary: The commentor also states that 66264.228(a)(2)(C)(1) talks about about preventing water from entering the pond (commentor's underlines), while 66264.228 (e) (5) talks about water entering the foundation layer, and that (e) (5) should be revised to address water entering the pond.

Comment response: A revision of section 66264.228(e)(5) is not necessary. Section 66264.228(a)(2)(C)(1) states, "Prevent the downward entry of water into the closed impoundment..." (respondent's underline). The closed impoundment includes all elements of the surface impoundment including the final cover, the foundation layer, and the waste contained in the impoundment. A properly designed and constructed barrier layer which prevents water from entering the foundation layer, satisfying the requirement of 66264.228(e)(5), will prevent water from entering the closed impoundment (satisfying the requirement of 66264.228(a)(2)(C)(1)).

**Comment AH59 - Section 66264.228(e)(8)**

Commentor - Chemical Waste Management

Comment summary: The commentor states that the requirement that a cover system include a synthetic membrane if the liner system of that unit also contains a synthetic membrane is inappropriate. The cover system should be designed to meet a performance standard of having a permeability equal to or less than that of a liner system.

Comment response: The commentor's suggestion cannot be accommodated because this section contains requirements currently set forth in title 22, CCR, section 67288. The Department has merged these provisions of existing State law into the text of 40 CFR section 264.228 in order to retain the level of stringency currently existing in State regulations.

The Statement of Reasons for Rulemaking R-95-83 (the rulemaking which promulgated the current title 22, CCR, section 67288) states:

A synthetic membrane is required in subsection (f) (7) if hazardous waste is underlain by a liner containing a synthetic liner that does not leak, because in that situation only a synthetic membrane will comply with the requirements of the federal regulations in 40 CFR. State regulations must be at least as stringent as those regulations if the state is to administer the federal regulations (which apply in any case, whether or not the state administers them). Subsection (a) (2) of section 264.228 (not proposed for adoption by the Department) requires that surface impoundments containing hazardous waste after closure shall be covered with a final cover that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. Subsection (a) of section 264.221 requires that surface impoundments have a bottom liner constructed of material that can prevent waste from migrating into the liner (as subsection (a) of section 264.301 requires for landfills). Only a liner containing a synthetic membrane that does not leak has that capability. EPA notes (U.S. EPA Permit Applicants' Guidance Manual for Hazardous Waste Land Storage, Treatment, and Disposal Facilities, Vol. I, Draft January 1983) the following:

"The function of the low permeability layer is to reject fluid transmission, thereby causing infiltrating precipitation to exit through the drainage layer. It should consist of at least two components. The upper component should be at least a 20 mil thick synthetic membrane. While the regulations do not specify that the final cover prevent infiltration, the requirement that it be no more permeable than the bottom liner, as a practical matter, necessitates the use of a synthetic membrane. This is so because the regulatory requirement for the liner system does specify that leachate be contained and this will be translated in most cases into a very nearly impermeable synthetic membrane liner."

**Comment AH60 - Section 66264.228(e)(9)**

Commentor - Chemical Waste Management

Comment summary: The commentor suggests that in order to clarify this section, that the phrase, "If a synthetic membrane is used in the final cover system..." be added at the beginning of this section.

Comment response: This comment will be accommodated by adding the suggested language to the text contained in 66264.228 (e) (9).

**Comment AH61 - Section 66264.228(e)(18)(D)**

Commentor - Chemical Waste Management

Comment summary: The commentor states that the language of this section requires that actual strength and compressibility testing of the material of all dikes be conducted. This language would result in taking borings of existing units, including boring through a closure cap in many instances, which is explicitly prohibited. The commentor recommends that this section be deleted.

Comment response: This comment cannot be accommodated because the requirements of this section currently exist in title 22, CCR, section 67288 and have been merged into the text of 40 CFR section 264.228 in order to retain the level of stringency currently existing in State regulations.

These regulations apply to those surface impoundments which are in the process of being closed, not those units which have already been closed. The testing required under this subsection would be conducted before the closure cap would be put in place, thereby eliminating the possibility of having to bore through a cap already in place.

**Comment AH62.1 - Section 66264.228(e)(18)(H)**

Commentor - Chemical Waste Management

Comment summary: The commentor states that the language of this section is overly broad with respect to the requirement that dikes have sufficient structural integrity to withstand forces to which they can be exposed. The commentor recommends that the language be changed to "significantly withstand reasonable design forces".

Comment response: The commentor's recommendation cannot be accommodated because the requirements of this section currently exist in title 22, CCR, section 67288 and have been merged into the text of 40 CFR section 264.228 in order to retain the level of stringency currently existing in State regulations.

The certification that the professional engineer must provide is based upon his professional judgement and analysis of the information specified in items 1-4 of this section, not "any and all forces", as the commentor asks in his second comment. It is the professional engineer's responsibility to determine what forces may be expected, and if the dikes have sufficient structural integrity to withstand them.

**Comment AH62.2 - Section 66264.228(e)(18)(H)**

Commentor - Chemical Waste Management

Comment summary: The commentor also asks, "...if it was possible for a dike to fully withstand any and all forces, what is the point of post-closure care and monitoring?"

Comment response: This comment is beyond the scope of this rulemaking.

**Comment AH63 - Section 66264.228(f)(3)**

Commentor - Chemical Waste Management

Comment summary: The commentor states that the tests which are referenced in this section (specifically the double ring infiltrometer) are inappropriate and inaccurate for determining the permeability of clay liners, and that laboratory testing of liner samples can be used to verify compliance.

Comment response: This comment cannot be accommodated because this section contains requirements currently found in title 22, CCR, section 67288 and title 23, CCR, section 2541, which mandate in-situ or field determinations of permeability. The Department has merged these provisions of existing State law into the text of 40 CFR section 264.228 to retain the level of stringency currently existing in State regulations.

The attached comments and evaluation of the double-ring infiltrometer which were supplied by the commentor as Enclosure 3 cannot be considered for the purposes of this rulemaking for two reasons: it is not dated, and it carries no notation of its author. Without this information, it cannot be determined if this document has been published and subjected to peer review, which would either support or refute the paper's scientific validity. It is the Department's position that large scale, in field testing is more representative than small laboratory samples.

**Comment AH64 - Section 66264.228(g)(2)**

Commentor - Chemical Waste Management

Comment summary: The commentor feels that the Department must show a demonstrated need when requiring additional compaction tests. The commentor recommends that the section be reworded to read, "If the Department demonstrates the need for additional compaction tests in certain areas, the owner or operator shall undertake such tests in those areas."

Comment response: This comment cannot be accommodated because this section contains language currently found in title 22, CCR, section 67288. The Department has merged the provisions of this existing State law into the text of 40 CFR section 264.228 to retain the level of stringency currently found in the State regulations. The commentor's recommendation would shift the burden of proof for compliance from the permittee to the Department, which is unacceptable.

**Comment AH65 - Section 66264.228(g)(6)**

Commentor - Chemical Waste Management

Comment summary: The commentor recommends that requirements (d), carbon content, and (e), concentration of soluble salts in soil pore water, be deleted because they are unnecessary, unreasonable, and are not commonly used in the geotechnical field for qualification of soil liners.

Comment response: This comment cannot be accommodated because this section contains requirements currently set forth in title 22, CCR, section 67288. The Department has merged these provisions of existing State law into the text of 40 CFR section 264.228 in order to retain the level of stringency currently existing in State regulations.

**Comment AH66 - Section 66264.228(i)**

Commentor - Chemical Waste Management

Comment summary: The commentor agrees with this requirement, and suggests that no changes be made to it.

Comment response: No response necessary.

**Comment AH67 - Section 66264.228(a)(2)(C)(6) and  
Section 66264.228(m)**

Commentor - Chemical Waste Management

Comment summary: The commentor supports the change from maximum credible earthquake to maximum probable earthquake. Commentor suggests that section 66264.228(m) be modified to require that structures withstand MPE "without significant damage", to recognize the reality of some amount of damage would result from a major earthquake.

Comment response: This comment will be accommodated by inserting the word "significant". The addition of the commentor's proposed language will not change the intent of the regulation to maintain the structural integrity of affected structures.

NOTE: In analyzing the potential effects of these proposed regulations, it was determined that changing the standard from "maximum credible earthquake" to "maximum probable earthquake" would result in a lessening of the stringency of the current regulations. Because of these findings, the change from "maximum credible" to "maximum probable" earthquake will be withdrawn, and the regulations shall continue to use the term "maximum credible earthquake".

**Comment AH68 - Section 66264.228(a)(2)(C)(6) and  
Section 66264.228(m)**

Commentor - Chemical Waste Management

Comment summary: The commentor would also like see a risk-based, probabilistic approach to seismic design be investigated. This type of approach would recognize the reality of some amount of damage resulting from a major earthquake.

Comment response: This comment is outside of the scope of this rulemaking.

**Comment AH69 - Section 66264.301(a)(1)**

Commentor - Chemical Waste Management

Comment summary: Language and comments the same as those under section 66264.221(a).

Comment response: See response to Comment AH50.

**Comment AH70 - Section 66264.301(c)**

Commentor - Chemical Waste Management

Comment summary: Language and comments the same as those under section 66264.221(c).

Comment response: See response to Comment AH51.

**Comment AH71 - Section 66264.310(a)(1)**

Commentor - Chemical Waste Management

Comment summary: Language and comments the same as those under section 66264.228(a)(2)(C).

Comment response: See response to Comment AH53.

**Comment AH72 - Section 66264.310(c) and (d)**

Commentor - Chemical Waste Management

Comment summary: The commentor recommends that these two sections be deleted because modern hazardous waste landfills do not produce landfill gas in any measurable quantity, and that these requirements are appropriate only for municipal waste landfills.

Comment response: Section 66264.310(c) begins with the statement, "Unless the owner or operator can demonstrate to the satisfaction of the Department that significant amounts of toxic or flammable gas will not be emitted...". This clearly indicates that an exemption may be granted from these requirements if a demonstration is made by the owner or operator. For this reason, the commentor's request cannot be accommodated.

**Comment AH73 - Section 66264.312(b)**

Commentor - Chemical Waste Management

Comment summary: The commentor disagrees with the Department's deletion of 40 CFR section 264.312(b) regarding the landfilling, under certain conditions, of containers holding ignitable wastes. The commentor also points out an inconsistency in the proposed regulations between the requirements for permitted facilities and interim status facilities, and suggests that the Department switch the prohibition against the landfilling of ignitable wastes to apply to interim status facilities instead of permitted facilities.

Comment response: This comment cannot be accommodated because this section contains requirements existing in title 22, CCR, section 67420, which allows an exemption from the requirements of section 67420 (a) only at interim status facilities. To switch the prohibition would make the requirements at interim status facilities more stringent, while lessening the stringency at permitted facilities, which is unacceptable. The Department acknowledges the inconsistency in this section of the regulations, and will address it in a future rulemaking.

**Comment AH74 - Section 66264.314(c)(1)**

Commentor - Chemical Waste Management

Comment summary: The commentor points out an ambiguity in the Statement of Reasons, and requests that section 264.314(c)(1) be adopted in full, because existing Title 22, CCR, section 67422(d), is substantially consistent with 264.314(c)(1).

Comment response: Based upon the content of the comment, the Department believes that the commentor has misidentified the section which it wishes to be adopted. The commentor is concerned with language relating to the removal of free liquids from hazardous wastes. In the Statement of Reasons, the deleted section of federal language was incorrectly identified. The section to which the Statement of Reasons should have referred to is 264.314(d)(1) instead of 264.314(c)(1).

Section 264.314(d)(1) will be reinserted into the proposed text of these regulations as section 66264.314(c), which will accommodate the commentor's request. The Statement of Reasons will be amended to reflect this change.

**Comment AH75 - Article 6. Ground Water Monitoring and Response Programs for Permitted Facilities**

Commentor AH - Chemical Waste Management Inc.

Comment: "Attached herewith are CWM's comments on the revised Article 5 of Subchapter 15. Since these requirements are nearly identical to the Department's Article 6 requirements, we request that the Department review these comments and institute the suggested changes in the appropriate sections of CHAPTER 14 and CHAPTER 15."

Comment response: The Department and the State Water Resources Control Board (SWRCB) have jointly reviewed all comments submitted for proposed Article 6 of Chapters 14 and 15 of title 22 and for proposed Article 5 of Subchapter 15 and made appropriate changes to the both sets of proposed regulations. The Department concurs with the responses drafted by SWRCB staff and is incorporating those responses into this rulemaking file.

**Comment AH76 - Sections 66265.112(b)(8) and 66265.112(b)(9)**

Commentor AH - Chemical Waste Management

Comment AH76.1: "We believe the Department has stretched CEQA beyond its scope with its view that CEQA applies to the closure plan approval process. CEQA has not been invoked in other elements of interim status operations and its attempted application here is equally inappropriate."

Comment response: Pursuant to section 21080 of the California Environmental Quality Act (CEQA), any discretionary project proposed to be carried out or approved by a public agency has to comply with CEQA. Since closure plan approval is a discretionary action, it must also be complied with the CEQA. Therefore, closure plan is required to include an initial study to make a determination if a facility closure will have any impact on the human health and the environment.

Comment AH76.2: Preparation of an initial study for the closure plan for CEQA compliance pursuant to section 66265.112 (b) (8), and required submission of the information specified in 66265.112 (b) (9) will only serve to delay the closure of interim status facilities. The closure performance must be met by the owner/operator and it is DHS' responsibility in the closure plan review to determine whether the closure steps described can reasonably be expected to meet the closure standard.

Comment response: For the first part of this comment, please see response to comment AH76.1 above. As regards to the required submission of information specified in section 66265.112(b)(9), the Department has deleted the requirement of a quantitative risk assessment from the closure plan by deleting subsection 66265.112 (b) (9).

**Comment AH77 Section 66268.7**

Commentor - Chemical Waste Management, Inc.

Comment summary: The commentor recommends that their notification form be adopted as the Department's own.

Comment response: This comment is beyond the scope of this rulemaking. The Department will consider the commentor's recommendation when it develops a uniform notification form.

**Comment AH78 - Section 66268.33(c)**

Commentor - Chemical Waste Management, Inc.

Comment summary: "We suggest that the Department improve upon the federal version of this rule and explicitly set out the EPA hazardous wastes eligible for the variance."

Comment response: The Department will consider commentor's recommendation in future rulemakings. However, the implementation of their recommendation is beyond the scope of this rulemaking.

**Comment AH79 - Section 66270.4(a)**

Commentor AH - Chemical Waste Management

Comment summary AH79.1: "Permit as shield": A permit is a facility's individual rulebook. To say that an owner/operator must comply with both the regulations and its permit is to be either redundant or unreasonable. The permit provisions are the regulations, but developed specifically for one facility. In some cases, new regulations may be onerous for facilities which have already completed construction and commenced operation pursuant to their permit and former regulations.

Comment response: This comment was not accommodated. The language inserted in new subsection (a) of section 66270.4(a) is essential to implement requirements of Health and Safety Code section 25202 to require owners and operators of permitted hazardous waste facilities to comply with all current regulations in addition to the permit. The requirements of this subsection are also necessary to distinguish the State's program and authority from the less stringent federal permitting program. Please note that any provision in Health and Safety Code cannot be repealed through authorization process. Regarding your concern about the implementation of new adopted regulations by a facility we would like to inform that 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 hazardous waste facility permit.

Finally, under "permit as shield," the Department could in effect grant a variance from a regulation merely by failing to mention that regulation in the permit. This would violate Health and Safety Code section 25143, which imposes specific conditions on a variance.

Please note that the language of proposed subsections 66270.4(a) and (b) have been further modified. New language of these subsection reads as following:

(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 of a permitted facility. 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."

(b) "Notwithstanding 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 summary AH79.2: Section 270.4(a) must be read in conjunction with 270.41 (a) (section 66270.41 (a)), under which causes for permit modifications are listed. One cause given in the promulgation of new "standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations or by judicial decision after the permit was issued." This section thus furnishes the mechanism for modifying permits to incorporate new and possibly inconsistent regulations.

Comment response: This comment has been adequately addressed in the response to comment AH79.1 above.

Comment AH79.3: The Department's deletion of section 270.4(a) may place an owner /operator into a predicament where he does not know what guidelines control his operations. An owner/operator should not be forced to function with this level of uncertainty. We urge the Department to recognize the importance of the "permit as shield" concept and retain 270.4(a).

Comment response: The response to comment AH79.1 above adequately addresses this comment.

**Comment AH80 - Section 66270.14 (b) (11) (A)**

Commentor AH - Chemical Waste Management

Comment: This section requires that a new facility or a facility undergoing a "substantial modification" shall demonstrate compliance with the seismic standard. The commentor would interpret a "substantial modification" to be a Class 3 physical modification to the facility. It is recommended that this section be modified to tie in this specific definition of "substantial modification".

Comment response: This comment was accommodated. A new language "(a Class 3 modification specified in section 66270.42(c) involving physical changes to the facility)" has been incorporated following

the words "substantial modification" in section 66270.14(b)(11) (A).

**Comment AH81 - Section 66270.42**

Commentor AH - Chemical Waste Management

Comment AH81.1: The State has incorporated CEQA approval into the permit modification procedures. This is inappropriate.

Comment response: This comment was not accommodated. Pursuant to Public Resources Code section 21080, any discretionary project proposed to be carried out or approved by a public agency has to comply with the California Environmental Quality Act (CEQA). Therefore, if a decision to allow permit modification is discretionary, that modification must comply with CEQA. The proposed regulations do not incorporate CEQA into permit modification, but rather clarify that CEQA must be complied with those discretionary projects.

Comment AH81.2: The county is the lead agency for making CEQA determination, therefore, the State has no authority to promulgate this requirement.

Comment response: Since Department of Health Services has the responsibility to process hazardous waste permit applications, it is, therefore, also responsible for CEQA compliance. The Department may assign a county to be the lead on preparing an Environmental Impact Report, but the Department is ultimately responsible to ensure CEQA compliance for a project germane to a hazardous waste facility.

**Comment AH82 - Section 66270.42(b)(6)**

Commentor AH - Chemical Waste Management

Comment AH82.1: The State has not incorporated 40 CFR 270.42(b)(6)(iii), (b)(6)(v), and various related provisions. This is the "default" language which gives automatic authorization of a Class 2 modification in the event the Department fails to make a timely decision on an application.

Comment response: The automatic authorization provision contained in the federal regulations could, if included in the proposed state regulations, prevent the Department from being able to comply with existing state law (Public Resources Code section 15000 et seq.) set forth in California Environmental Quality Act (CEQA). Under the requirements of CEQA, many Class 2 modification requests will require the Department to go through either a negative declaration or an environmental impact report process. Both of these processes

typically require much longer than 90 days (or 120 days which is allowed under 40 CFR 270.42(b)(6)(i)(E) to complete. (The time required to complete these CEQA processes varies depending on the complexity of the modification, the extent of public controversy, and how quickly and adequately the facility responds to Departmental requests for information needed to complete the CEQA process. Therefore, the subject federal language cannot be included in the proposed regulations.

Comment AH82.2: This cuts to the very heart of the intent of the Class 1/2/3 permit modification regulations. Environmental Protection Agency (EPA) recognized that previous procedures were too unwieldy, and therefore specifically promulgated the current regulations to somewhat alleviate those problems. Without the "default" language, there is no difference between a Class 2 and Class 3 modification. Without the "default" language, there is no point in using Class 1/2/3 instead of major/minor permit modification procedures.

Comment response: Proposed regulations (section 66270.42) contain very specific requirements for Class 1/2/3 permit modifications. The reason for not including the "default" language of 40 Code of Federal Regulations section 270.42 in the proposed state regulations is because unlike EPA, the Department is responsible to ensure compliance with CEQA. Based on the factors mentioned in the above response, CEQA compliance could be a time consuming process.

CEQA is to be complied pursuant to Public Resources Code section 21080, for any discretionary project proposed to be carried out or approved by a public agency in California. Therefore, if a decision to allow facility/permit modification is discretionary, that modification must comply with CEQA.

Comment AH82.3: Part B permits are not static. They are living documents, and need constant change to properly reflect the changing word of regulations and waste management practices. Class 2 modifications do not substantially alter the facility or its operation. Class 2 modifications are limited to those enabling "a permittee to respond in a timely manner" to waste variations, technology advancements, and new regulations. It is imperative that the Department provide timely review of Class 2 modification requests.

Comment response: It has been Department's constant effort to provide timely decisions on activities relative to the management of hazardous wastes. In the best interest to protect public health and environment, and to comply with state laws, it is equally important that appropriate changes/modifications germane to the management of hazardous waste be adequately reviewed. For details on the Department's position on excluding federal "default" language from the proposed regulations, please refer to responses to comments AH82.1 and AH82.2.

Comment AH82.4: In the September 28, 1988, Federal Register, EPA states that "the 'default provision' is a critical element in its new permit modification scheme. Without such a provision, the regulated industry will have no assurance that the Agency will act expeditiously even on relatively limited changes that are necessary to the ongoing operation of a facility and that, in many cases, would upgrade public and environmental protection. Without such an assurance, the agency believes that it will be difficult if not impossible for many facilities to manage wastes safely and effectively in the increasingly complex world of hazardous waste management."

The State needs to incorporate the subject language into title 22.

Comment response: This comment was not accommodated. Please refer to responses to comments AH82.1, 2, and 3 above for details.

**Comment AH83 - Section 66270.42(b)(8)**

Commentor AH - Chemical Waste Management

Comment AH83.1: The State has not incorporated 40 CFR 270.42(b)(8), which allows the permittee to perform construction associated with a Class 2 modification while the application is still pending. This provision should be included in title 22.

Comment response: This comment has been accommodated. Existing 40 Code of Federal Regulations section 270.42 (b) (8) has been modified and incorporated as proposed section 66270.42 (b) (8) which reads as follows:

66270.42(b)(8): "Except for construction of new hazardous waste management units, the permittee may perform any construction associated with a Class 2 modification request beginning 60 days after the submission of the request unless the Department establishes a later date for commencing construction and informs the permittee in writing before day 60. Construction performed pursuant to this subsection shall not affect the Department's authority to approve or disapprove a permit modification request for the subject hazardous waste management activity."

Comment AH83.2: It is permittee's own business risk whether to start construction prior to permit approval. The provision does not allow the permittee to commence the subject waste management activity, hence there is zero risk to human health or the environment. The provision solely allows construction. That business decision should be left in the hands of the permittee. It is inappropriate for the State to exercise that right.

Comment response: Please see response to comment AH83.1 above.

**Comment AH84 - Section 66270.42(c)(6)**

Commentor AH - Chemical Waste Management

Comment: The condition of "Class 3 modification in association with Chapter 21" requires that, at the end of the 60-day comment period, the Department shall grant or deny the Class 3 modification in accordance with the procedures of Chapter 21. However, Chapter 21 includes its own 45-day comment period. This means that there will be a 60-day comment period followed by a 45-day comment period. This is redundant, overly burdensome and time consuming, and will be confusing to the public. Section 66270.42(c)(6) should be revised to exclude the double comment period.

Comment response: This comment was not accommodated. The Department concurs with your interpretation of the referenced section. The proposed regulation has been taken directly from the current federal regulation (Code of Federal Regulation section 270.42 (c) (6), as promulgated in Federal Register on September 28, 1988. Since this federal regulation is more stringent than the current State regulation, therefore, it cannot be repealed through the authorization process.

**Comment AH85 - Section 66270.42(e)(2)(A)2**

Commentor AH - Chemical Waste Management

Comment: This condition states that temporary authorization may be requested for Class 3 modifications that meet the criteria in:

- (3) (C) 1 or (3) (C) 2; or
- (3) (C) 3 through (3) (C) 5 and provides improved management.

The problem here is the word "through." Review of the Federal Register preamble and conversation with Wayne Roepe (the author of the EPA language) confirm that the language is poorly worded. EPA intended that the operative requirement here was the additional requirement to "provide improved management." The intent was not to meet each of 3, 4, and 5. The language should be revised to read:

- any one of (3) (C) 3, (3) (C) 4, or (3) (C) 5; and provides improved management.

Comment response: The language of proposed section 66270.42(e)(2)(A)2 has been taken directly from the corresponding federal regulation (Code of Federal Regulation section 270.42(e)(2)(i)(B), as promulgated in Federal Register on September 28, 1988). The intent of Resource Conservation and Recovery Act (RCRA) authorization is not to repeal any existing regulation/law nor to adopt RCRA, but to adopt the more stringent of these

regulations. Therefore, existing language of a regulation/law cannot be repealed through the authorization process. Therefore, this comment was not accommodated. However, please be advised that when EPA clarifies its intent about this regulation through a policy memo or other formal means, the Department would interpret this regulation accordingly if EPA's interpretation is not less stringent than the corresponding current State regulations.

**Comment AH86 - Section 66270.42(g)(1)(B)**

Commentor AH - Chemical Waste Management

Comment summary: Section 66270.42(g) allows a permittee to continue to manage wastes after they are later listed as hazardous. However, paragraph (g)(1)(B) has new language which adds the requirement to first obtain Department approval of the permittee's pending Class 1 modification request. The facility should not be required to discontinue managing the waste because of the Department's inaction.

Comment response: This comment was not accommodated. The issue involved in this comment is adequately addressed in the "Statement of Reasons" for "Environmental Health Standards for the Management of Hazardous Waste" which describes as following:

The corresponding federal regulation (40 Code of Federal Regulation (CFR) section 270.42(g)(1)) allows permitted facilities to continue managing newly listed or identified hazardous wastes if they submit a Class 1 modification request on or before the date the waste becomes subject to regulation (and meet certain other requirements). When this section was added to the federal regulations the intent was to provide the permitted facilities with procedures for continuing to manage newly listed or identified wastes comparable to the procedures already provided under 40 CFR for interim status facilities. 40 CFR section 270.72(a)(1) allows interim status facilities to continue to manage newly listed or identified wastes if they submit a revised Part A permit application on or before the date the waste becomes subject to regulation (and meet certain other requirements). Existing (section 66389(b)(1)) and proposed (section 66270.72(a)(1)) title 22, California Code of Regulation (CCR) regulations pertaining to interim status facilities differ from the 40 CFR regulations in that interim status facilities must submit and receive Department approval of a revised Part A application before continuing to manage newly listed or identified hazardous wastes. To be consistent with the intent of the corresponding 40 CFR regulation and with title 22, CCR, requirements for interim status facilities, section 66270.42(g)(1)(B) is being revised to require permitted facilities to receive Department approval of the Class 1 modification in order to continue managing a newly listed or identified waste.

Thus, the Department has already established in regard to interim status facilities that Department approval must be received. These regulations establish consistency by establishing an equivalent standard for permitted facilities.

**Comment A11 - Section 66260.10**

Commentor AI - California Manufacturers Association

Comment summary: "'END-USER' - This definition appears to be INCONSISTENT with subdivision (b) of section 25143.2 of the Health and Safety Code. End-user is defined in the regulation as any person who receives a hazardous waste from an unaffiliated third party and intends to, or does, use that waste in a prescribed manner. However, the Health and Safety Code states that any recyclable material is not a hazardous waste under Chapter 6.5 [of Division 20] when the material can be shown to be recycled in that same prescribed manner (emphasis added). The only time that the recyclable material would qualify as a hazardous waste would be if it meets the qualifications set forth in subdivision (e) of section 25143.2 of the Health and Safety Code. If the intent is to include recyclable materials beyond those specifically detailed in [section] 25143.2(e), then this definition is NOT CONSISTENT with the enabling legislation and should be amended or deleted."

Comment response: The commentor addressed the definition of "end-user", a definition that has existed in state regulations as title 22, CCR, section 66049 since August of 1985. As such, the section predates Health and Safety Code section 25143.2 in its present (AB 1847, Ch. 1436, Stats. 1989) and preceding [AB 4636, Ch. 1631, Stats. 1988 and AB 2166, Ch. 1594, Stats. 1985 (October 1985)] forms. Therefore, that statute cannot be considered to be the "enabling legislation" of title 22, CCR, section 66049, as the commentor stated. Furthermore, since statutes generally supersede regulations, the subject regulatory definition cannot be inconsistent with existing statute (i.e., with Health and Safety Code section 25143.2); thus, the regulatory definition has simply been partially superseded by the more recent and less stringent statute.

For example, the definition of "end-user" was added to the regulations in 1985 as title 22, CCR, section 66049 for purposes of title 22, CCR, section 66810, a section which provides for Series C Resource Recovery Facility Permits. Such permits are based on modified hazardous waste facility permit application requirements and are available only to a limited universe that includes "end-users". Thus, in 1985 "end-users" would generally have been subject to full hazardous waste facility permit application requirements until adoption of title 22, CCR, sections 66810 and 66049. However, later in 1985, and again in 1988 and 1989, Health and Safety Code section 25143.2(b) conditionally exempted (as of specified effective dates) from Departmental regulation, recyclable materials that are directly used without processing as industrial

process ingredients or as commercial product substitutes (among other exemptions). Consequently, some "end-users" no longer needed permits of any kind, including Series C Resource Recovery Facility Permits, because the statute superseded the regulation. However, as the commentor correctly stated, some of those "end-users" would not qualify for the statutory exemptions pursuant to the conditions set forth in Health and Safety Code section 25143.2(e). That subdivision prevents "end-users" from qualifying for exemption, if (for example) they use non-RCRA hazardous wastes (from offsite sources) that are spent etchants, etc. [see Health and Safety Code section 25143.2(e)(6)]. Nevertheless, these "end-users" would still be eligible for the modified permit application requirements of the Series C Resource Recovery Facility Permit in lieu of the full permit application requirements of the hazardous waste facility permit. Therefore, a 1985 regulation (i.e., the proposed section 66260.10 definition of "end user") transferred essentially without modification to the subject regulations in 1990 cannot recapture a universe exempted by an existing statute, regardless of when the statute was enacted and regardless of the Department's intent in retaining the 1985 regulation. Proposed section 66261.6(a)(3)(A) reinforces this conclusion.

Based on the preceding discussion, the Department disagrees with the commentor's claim that the regulatory definition of "end-user" (and presumably the corresponding permit requirement) is inconsistent with the conditional, statutory exemption for some of such persons in Health and Safety Code section 25143.2(b). The statutory exemption for some "end-users" has merely restricted the universe subject to the regulatory definition to those "end-users" who cannot qualify for the statutory exemption, because the statute supersedes the regulation. Thus, regardless of the Department's intent, the regulation cannot recapture in its universe of "end-users" such persons who qualify for the statutory exemption. However, the comment indicates a possible clarity problem which could lead one to believe that the regulation and statute are inconsistent. Therefore, the comment is being accommodated by modifying the regulation to include a reference to "end-users" who are subject to the exclusions in Health and Safety Code section 25143.2(e).

**Comment AI2 - Section 66262.10(d)**

Commentor AI - California Manufacturers Association

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: See response to comment A28.

**Comment AI3 - Section 66262.10(d)**

Commentor AI - California Manufacturers Association

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: See response to comment A28.

**Comment: AI4 - Section 66260.10**

Commentor AI - California Manufacturers Association

Comment: "'NON-RCRA HAZARDOUS WASTE' - This definition lacks CONSISTENCY with present regulations, lacks NECESSITY beyond what is presently prescribed in regulation, and may be INCONSISTENT with the AUTHORITY of Health and Safety Code Section 25117.9. Present regulation allows generators to make a 'self-determination' that a waste is non-RCRA. This new proposed regulation would require a generator to 'demonstrate to the Department that the hazardous waste is a non-RCRA hazardous waste'. This requirement goes beyond what is required in 40 CFR and also in present California statute and regulation. It is also INCONSISTENT with the definition of 'RCRA Hazardous Waste' which requires only a 'determination' that the hazardous waste is a non-RCRA hazardous waste. The definition should be changed to allow for generators to make a self-determination that a waste is non-RCRA."

Comment response: 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 AI5 - Section 66260.10**

Commentor AI - California Manufacturers Association

Comment: "SPILL" - This definition, "Spill means release" is identical with the definition presently in Section 66196 of Title 22 of the California Code of Regulations. Nonetheless, this definition lacks CLARITY. While a spill may involve a release of material, the word "release" is generally very broadly defined in other sections of the Health and Safety Code. For example, in Section 25501 "release" is defined as "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping or dispersing." Certainly the definition of "spill" does not encompass all these definitions of "release". What does it mean then? We question the NECESSITY of including this definition of "spill" or any definition of "spill" in the proposed regulations. We suggest deleting this definition or, at least, clarifying the definition further as to its NECESSITY.

Comment response: The Department agrees with the commentor that all the activities referred to in the definition of "release" cannot be called "spills". The term "spill" implies a lack of intent to release hazardous material/waste. The Department proposes to alter this definition to apply only to those releases which are unintentional by defining spill as follows:

"Spill" means an unintentional release"

This definition recognizes the accidental nature of spills and states that these unintentional releases could arise from any of the activities defined as "releases".

A word search of Health and Safety Code Chapter 6.5 and of the existing title 22, division 4, chapter 30, CCR, regulations turned up numerous instances where the terms "spill" and "spilling" are currently used. The Department feels that the fact that this term is used very frequently establishes sufficient necessity to require defining this term.

#### Comment AI6 - 66261.2(b)(4)

Commentor AI - California Manufacturers Association

Comment summary: Paragraph (4) of subdivision (b) of this section (section 66261.2) defines "discarded" material (and thus a "waste" as defined in subdivision (a) of this section) as a mislabeled or not adequately labeled material unless specified action is taken. We question the necessity of this proposed regulation as well as its clarity, e.g., a 10 ounce can of solid drain pipe cleaner becomes a "discarded material" and thus a "waste" if it is labeled as a 12 ounce can and not relabeled correctly within 10 days, regardless of whether or not it poses a threat to public health or the environment. We question that this is the intent of the regulations. We would suggest that this definition be added as subdivision (e) of section 66261.2 and read as follows:

(e) A material is a waste if it poses a threat to public health or the environment and it meets either, or both, of the following conditions:

(1) It is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.

(2) It is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

Comment response: The Department is accommodating this comment. The requirement that a material pose a threat to human health or the environment is being added to this subsection.

The Department also agrees that these materials are not necessarily discarded materials even if they are waste. This provision is being moved to a separate subsection at the end of this section to be defined independently as waste. The commentor proposed that this provision become subsection (e); it will be subsection (f). The phrase "public health" is being replaced by the phrase "human health" to be consistent with the definition of a hazardous waste.

**Comment AI7 - 66261.2(d)(1)(B)**

Commentor AI - California Manufacturers Association

Comment: "Subparagraph (B) of paragraph (1) of subdivision (d) of Section 66261.2 (found on page 3 of the Working Copy Document) lacks CLARITY and we question NECESSITY and CONSISTENCY. 40 CFR 261.2(c)(B)(ii) states that commercial chemical products listed in Section 261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use. For example, 1,3-dichloropropene is listed in 40 CFR 261.33 as hazardous waste number U084. This is a chemical sold as a commercial product to be used normally as a soil fumigant. RCRA does not consider recycling 1,3-dichloropropene by discarding it onto or into the soil as a soil fumigant to be a solid waste activity and excluded it as a waste. The proposed California regulation does the exact opposite to the RCRA regulation. It states that "Commercial chemical products" (such as 1,3 dichloropropene) "listed in Section 66261.33 are wastes... if they are applied to the land and that is their ordinary manner of use". This makes little sense unless it is the intent of the Department of Health Services to cease to allow the use of commercial chemical products being applied to the land when that is their ordinary manner of use. We submit that no materials should be considered as wastes when applied to the land and when that is their ordinary manner of use and when they are commercial chemical products listed in Section 66261.33."

Comment response: The Department is partially accommodating this comment. The Department is inserting the following statement at the end of section 66261.2(d)(1)(B): "However, if these materials are "retrograde materials" as defined in Health and Safety Code section 25121.5 or "surplus material" as defined in section 66260.10, they are not wastes except as provided in Health and Safety Code section 25120.5." Because commercial chemical products can be unneeded but uncontaminated "surplus material", they are still useable and should not be wastes. Similarly, the definition

of "retrograde material" in State statute encompasses some of these materials. Retrograde materials become recyclable materials, thus wastes and hazardous wastes, when the provisions of Health and Safety Code section 25120.5 (definition of "recyclable material") are met. Thus, this change is consistent with those definitions.

Existing Health and Safety Code section 25143.2(e)(1) states that no material used in a manner constituting disposal is eligible for the exemptions from classification as waste found in the recycling law. To state that the class of discarded materials referred to by the commentor is not "waste" would be inconsistent with that provision of State statute.

Neither 40 CFR Part 271 (requirements for authorizing states) nor Health and Safety Code section 25159.5(a) require that the State regulations be identical to the federal regulations. Indeed, both allow the State law to be more stringent and broader in scope than the federal regulations. Thus, the Department is allowed to regulate materials not regulated pursuant to Subtitle C of RCRA and to regulate any materials it regulates in a more stringent manner. This provision is broader in scope than the federal regulations by regulating materials not regulated under federal law but is not more stringent or broader in scope than existing State law.

**Comment AI8 - Section 66261.2(d)(2)(B)**

Commentor AI - California Manufacturers Association

Comment: "Subparagraph (B) of paragraph (2) of subdivision (d) of Section 66261.2 (found on page 3 of the Working copy Document) lacks clarity, necessity, and consistency. 40 CFR 261.2(c)(2)(ii) states that 'Commercial chemical products listed in Section 261.33 are not solid wastes if they are themselves fuels.' For example, methyl alcohol is listed in Section 261.33 as hazardous waste number U154. This is a commercial product which is used to fuel vehicles. As such, it is not a waste under RCRA. However, the proposed California regulation does the exact opposite to the RCRA regulations. The proposed regulation states that 'Commercial chemical products listed in Section 66261.33 are wastes...if they are themselves fuels' This area needs revision. Its intent is totally unclear and even misleading. Question: Should Section 66261.2 read, in part, 'Commercial chemical products listed in Section 66261.33 are not wastes...?'"

Comment response: The Department is partially accommodating this comment. The Department is inserting the following statement at the end of section 66261.2(d)(2)(B): "However, if these materials are "retrograde materials" as defined in Health and Safety Code section 25121.5 or "surplus material" as defined in section 66260.10, they are not wastes except as provided in Health and Safety Code section 25120.5." Because commercial chemical products can be unneeded but uncontaminated "surplus material", they are still useable and should not be wastes and are not wastes under

existing law. Similarly, the definition of "retrograde material" in State statute encompasses some of these materials. Retrograde materials become recyclable materials, thus wastes and hazardous wastes, when the provisions of Health and Safety Code section 25120.5 (definition of "recyclable material) are met. Thus, this change is consistent with those definitions.

Existing Health and Safety Code section 25143.2(e)(2) states that, with specified exceptions, no material burned for energy is eligible for the exemptions from classification as waste found in the recycling law. To state that the class of discarded materials referred to by the commentor is not "waste" would be inconsistent with that provision of State statute. Thus, the language suggested in the last sentence of this comment is inconsistent with State statute.

Neither 40 CFR Part 271 (requirements for authorizing states) nor Health and Safety Code section 25159.5(a) require that the State regulations be identical to the federal regulations. Indeed, both allow the State law to be more stringent and broader in scope than the federal regulations. Thus, the Department is allowed to regulate materials not regulated pursuant to Subtitle C of RCRA and to regulate any materials it regulates in a more stringent manner. This provision is broader in scope than the federal regulations by regulating materials not regulated under federal law but is not more stringent or broader in scope than existing State law.

**Comment AI9 - 66261.2(d)(3)**

Commentor AI - California Manufacturers Association

Comment: "Paragraph (3) of subdivision (d) of Section 66261.2 (found on page 3 of the Working Copy Document) deals with the subject of reclamation and references Table 1 at column 3. This regulations lacks clarity and is inconsistent with RCRA. Indeed, materials noted with an "\*" in column 3 of Table 2 are wastes when reclaimed under 40 CFR 261.2(c)(3). However, those marked with an "\*\*\*" are not wastes under the RCRA regulations. Thus, under the RCRA regulations one may take a commercial chemical product (listed in Section 66261.33), for example, filter off a small trace of rust contamination (which may be construed as reclamation) and then reuse the material as a raw material in a process to produce another commercial chemical without ever having a waste. In the proposed regulation the exact opposite would be in effect. The rust could not be filtered out because the material noted with and "\*\*\*" is a waste when reclaimed. To assure consistency with RCRA, the double asterisks must be deleted from the Table 2 in columns 3 and 4 and left blank as is the case in 40 CFR."

Comment response: The Department cannot accommodate this comment. Health and Safety Code section 25143.2 contains California's exemptions from classification as waste for all materials otherwise meeting the definition of waste. The legend for the "\*\*\*"

incorporates a statement referring to those exemptions from classification as waste. No other exemption from classification as waste, except as described below, exists in current State law for materials being reclaimed; thus, no further exemptions from classification as waste can be adopted here.

Examination of this provision while considering this comment led the Department to the realization that some of the commercial chemicals referred to in row 4 of Table 1 to section 66261.2 could meet the definition of "retrograde material" found in Health and Safety Code section 25121.5 and would not become waste until they were identified as "recyclable materials", thus as waste and hazardous waste, by Health and Safety Code section 25120.5. The Department is inserting daggers following the entries in row 4, columns 3 and 4 and is inserting the following legend for the dagger: "\_ Note that commercial chemical products which are "retrograde materials" as defined in Health and Safety Code section 25121.5 are not wastes except as provided in Health and Safety Code section 25120.5."

Neither 40 CFR Part 271 (requirements for authorizing states) nor Health and Safety Code section 25159.5(a) require that the State regulations be identical to the federal regulations. Indeed, both allow the State law to be more stringent and broader in scope than the federal regulations. Thus, the Department is allowed to regulate materials not regulated pursuant to Subtitle C of RCRA and to regulate any materials it regulates in a more stringent manner. This provision is broader in scope than the federal regulations by regulating materials not regulated under federal law but is neither more stringent nor broader in scope than existing State law.

**Comment AI10 - 66261.2(d)(4)**

Commentor AI - California Manufacturers Association

Comment: "Paragraph (4) of subdivision (d) of Section 66261.2 (found on page 4) lacks clarity and necessity and is inconsistent with the RCRA regulations. This area deals with materials accumulated speculatively and refers to column 4 of Table 1. Indeed, materials noted with an "\*" in column 4 of Table 1 are wastes when speculatively accumulated under 40 CFR 261.2(c)(4). However, those marked with a "\*\*\*" are not wastes under the RCRA regulations. Thus, under RCRA, one may speculatively accumulate commercial chemical products (listed in Section 66261.33) for recycling. In California, under the proposed regulations, these materials would be wastes, which is exactly opposite to the RCRA exclusion. The double asterisks must be deleted from Table 1 in Columns 3 and 4 and left blank as is the case in 40 CFR. All references to double asterisks in the Table 1 must also be deleted."

Comment response: The Department cannot accommodate this comment. Health and Safety Code section 25143.2 contains California's

exemptions from classification as waste for all materials otherwise meeting the definition of waste. The legend for the "\*\*\*" incorporates a statement referring to those exemptions from classification as waste. No other exemption from classification as waste, except as described below, exists in current State law for materials being accumulated speculatively; thus, no further exemptions from classification as waste can be adopted here.

Examination of this provision while considering this comment led the Department to the realization that some of the commercial chemicals referred to in row 4 of Table 1 to section 66261.2 could meet the definition of "retrograde material" found in Health and Safety Code section 25121.5 and would not become waste until they were identified as "recyclable materials", thus as waste and hazardous waste, by Health and Safety Code section 25120.5. The Department is inserting daggers following the entries in row 4, columns 3 and 4 and is inserting the following legend for the dagger: "\_ Note that commercial chemical products which are "retrograde materials" as defined in Health and Safety Code section 25121.5 are not wastes except as provided in Health and Safety Code section 25120.5."

Neither 40 CFR Part 271 (requirements for authorizing states) nor Health and Safety Code section 25159.5(a) require that the State regulations be identical to the federal regulations. Indeed, both allow the State law to be more stringent and broader in scope than the federal regulations. Thus, the Department is allowed to regulate materials not regulated pursuant to Subtitle C of RCRA and to regulate any materials it regulates in a more stringent manner. This provision is broader in scope than the federal regulations by regulating materials not regulated under federal law but is neither more stringent nor broader in scope than existing State law.

**Comment A111 - Section 66261.3 (a)(2)(C)**  
(includes comment addressed to section 66262.11 (b))

Commentor - California Manufacturers Association

Comment summary: The commentor states that in proposed title 22, Cal. Code Regs., section 66261.3(a)(2)(C) a waste is a hazardous waste if it is listed in Appendix X to Chapter 11. This goes beyond present regulations in California. The commentor believes that self-determination should be allowed to be carried out by the waste generator. The commentor questions the necessity for the additions to the present regulations which no longer allow for generator self-determination of whether the waste is hazardous or not. The commentor strongly encourages the Department to incorporate the statutory language regarding "determinations" rather than requiring "demonstrations" as proposed in the regulations.

Comment response: See response to Comment D-6 section 66261.3(a)(2)(C) (includes comment addressed to section 66262.11 (b))

**Comment AI12 - Index**

Commentor AI - California Manufacturers Association

Comment summary: In the index to the proposed regulations, the title for Chapter 11 should read "Identification and listing of Hazardous Waste"

Comment response: The Department is accommodating this comment by correcting the title of chapter 11 as proposed (the word "or" is being replaced by the word "of").

**Comment AI13 - Section 66260.10**

Commentor AI - California Manufacturers Association

Comment summary: Page 1 of section 66260.10 should have a title, "Chapter 10. Hazardous waste management system: General"

Comment response: The Department is accommodating this comment by adding the title to chapter 10 as proposed.

**Comment AI14 - 66260.10**

Commentor AI - California Manufacturers Association

Comment summary: Section 66260.10, definition of "EPA Hazardous Waste Number", "...division as and EPA hazardous..." should read "...division as an EPA hazardous...".

Comment response: The comment refers to the text of the working copy document. The text is correct (as suggested by the commentor) in the proposed text document.

**Comment AI15 - 66260.10**

Commentor AI - California Manufacturers Association

Comment summary: In section 66260.10, in the definition of "Treatment", the word "therein" should not be capitalized.

Comment response: The comment refers to the text of the working copy document. The text is correct (as suggested by the commentor) in the proposed text document.

**Comment AI16 - Section 66261.2**

Commentor AI - California Manufacturers Association

Comment summary: In section 66261.2, Table 1. In the four column headings, the (c)'s should be replaced with (d)'s.

Comment response: The Department is accommodating this comment. The references to subsections (c) in the heading to the four columns of Table 1 of section 66261.2 are being changed to (d)'s.

**Comment AI17 - Section 66261.3(a)(2)(E)**

Commentor AI - California Manufacturers Association

Comment: "In Section 66261.3(a)(2)(E) of the working copy document, the references to paragraph (a)(2)(i) and (a)(2)(ii) should read (a)(2)(A) and (a)(2)(B)."

Comment response: The Department is accommodating this comment. While the working copy document will no longer be updated, this comment also applies to the proposed text document and is being corrected as suggested.

**Comment AI18 - Section 66261.3(a)(2)(E)4.**

Commentor AI - California Manufacturers Association

Comment summary: In section 66261.3(a)(2)(E)4. (of the working copy), the phrase "d minimis" should be "de minimis".

Comment response: The comment refers to the text of the working copy document. The text is correct (as suggested by the commentor) in the proposed text document.

**Comment AI19 - Section 66262.11(b)(1) and (b)(2)**

Commentor AI - California Manufacturers Association

Comment summary: The commentor states that these two subsections which set for 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 AI20 - Section 66261.24 (a) (includes comment addressed to Section 66261.101)**

Commentor - California Manufacturers Association

Comment summary: "The Federal TCLP is expected to be adopted in November of this year. Once adopted, California will be required to incorporate it into the new regulations if it is determined to be more stringent than the California Waste Extraction Test. Adoption of the TCLP as the test method for identifying wastes that are exempt under RCRA would cause Class II reinjection wells to be classified as hazardous waste injection wells. Due to the California land disposal restrictions on deep well injection of hazardous waste, the practice of disposing produced waters by reinjection back into the ground from which it was extracted would be prohibited. We propose that the California Waste Extraction Test continue to be used to characterize wastes that are exempt under RCRA."

Comment response: See response to Comment J-1 section 66261.24(a) (includes comment addressed to section 66261.101).

**Comment AI21 - Sections 66264.1(g)(5) and (6) and 66265.1(d)(9) and(10)**

Commentor AI21 - California Manufacturers Association

Comment: "The proposed regulations do not recognize current federal exemptions for elementary neutralization units, totally enclosed treatment facilities or wastewater treatment tanks that discharge either to a POTW or under neutralization activities.

"The proposed regulations, consistent with current regulations, require hazardous waste treatment permits or variances for routine neutralization and other treatment activities. Facilities that have submitted variance requests for these types of units, and which continue to operate without them, are technically in non compliance unless the units are identified in a Part A application. Obtaining a variance can take years; most often applications are never acted upon. None-the-less [sic], enforcement actions have been taken against facilities operating these types of treatment systems without a variance. By perpetuating the present system, industry is left in the untenable

position of being unable to obtain variances without viable treatment options. We recommend that the Department incorporate the RCRA exemptions into the above cited Sections."

Comment response: - See response to comment T34

Comment AI22 - Groundwater Monitoring Requirements Sections  
66260.10, 66264.1(b), 66265.1(b), 66264.90(a),  
66265.90(a), 66264.93, 66265.93, 66264.94,  
66265.94, 66264.95(b)(2), 66265.95(b)(2),  
66264.97(e)(3), 66265.97(e)(3)

Commentor AI - California Manufacturers Association

Comment: "Contrary to the Department's stated intention to maintain the status quo, many aspects of the proposed ground water monitoring requirements go substantially beyond what is required under current state or federal regulations, including Subchapter 15. Specific examples include:

- a) Definition of "regulated unit" (elimination of effective date).
- b) Applicability of regulations to facilities that do not currently treat or dispose of hazardous waste.
- c) Applicability of regulations to facilities that transfer hazardous waste.
- d) Elimination of federal exemptions for fully engineered units meeting certain requirements.
- e) Limitation on the ability of a single monitoring system to monitor more than one unit unless contiguous.
- f) Loss of ability to eliminate particular hazardous constituents from the list of monitoring parameters.
- g) Conformance of interim status monitoring requirements with those for permitted facilities.

As written, the regulations appear to give the Department very little flexibility to modify the requirements to fit individual facilities' potential to impact the environment. We recommend that the Department's proposed regulations conform to existing state and federal regulations, as has been the purported intent of this regulatory exercise.

Comment Response: As part of the effort to receive authorization for RCRA, the Department and the State Water Resources Control Board have prepared a consolidated set of water quality monitoring regulations that will 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 this 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 that does "fit the individual facilities' potential to impact the environment".

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 has been reviewed by the State Water Resources Control Board, EPA and the Department and found to be consistent with RCRA. Every comment from the public has been carefully considered. Public comments resulted in several important modifications to the proposed regulations.

The specific examples listed in this comment are discussed individually below:

- a) In response to this and other comments, 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.
- b) and c) 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.

- d) The elimination of this exemption is consistent with existing Subchapter 15. The Department has broad authority, however, to grant exemptions pursuant to Health and Safety Code 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.
- e) The proposed regulations are consistent with existing subchapter 15 which 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 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.

- f) In the proposed regulations, the Department has proposed a new approach to selecting monitoring parameters that should provide the owner or operator and the permit writer with the flexibility needed to design an efficient monitoring program with greater confidence than is possible under existing regulations. By periodically monitoring for the list of constituents of concern that are likely to be in or derived from waste in the regulated unit, the assumptions made during the selection of monitoring parameters are field verified. This allows the use of an abbreviated list of monitoring parameters that represent only those parameters that are the most likely to provide an early indication of a release from the regulated unit. The regulation does not specifically provide for exemptions from the list of constituents of

concern because that would necessarily undermine the goal of periodically testing the assumptions made in the design of the program. The Department does, however, have broad authority to grant exemptions pursuant to Health and Safety Code 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 a federal monitoring requirement can petition the Department for an exemption pursuant to section 66260.210.

In response to this and other comments, section 66264.98(g) and 66265.98(h) have been modified to allow the permit writer more flexibility to specify which locations must be monitored for constituents of concern.

- g) In response to this and other comments, subsection 66265.91(b) has been modified to provide the owner or operator a specific schedule (180 days) for submitting a water quality sampling and analysis plan that satisfies the provisions of article 6. Since most of the provisions of these proposed regulations are simply reflections of existing state and federal requirements, it is anticipated that the majority of permitted facilities will require only minor modifications to their existing monitoring programs. 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.

**Comment AI23 - Groundwater Monitoring Requirements Sections  
66265.90(a), .91(b), .98(k)(1) - (k)(3) and  
.99(e)(3)**

**Commentor AI - California Manufacturers Association**

**Comment:** "The proposed regulations conform the ground water monitoring requirements for interim status facilities with those applicable to permitted facilities. The proposed regulations also reach inactive sites, thereby accelerating corrective requirements. We recommend that all interim status facilities operating under interim status documents as of the effective date of the new regulations be grandfathered in and allowed to maintain their present groundwater monitoring programs pending issuance of a Part B permit.

Comment response: The exact changes recommended in this comment have not been made to the proposed regulations. However, in response to this and other comments, subsection 66265.91(b) has been modified to provide the owner or operator a specific schedule (180 days) for submitting a water quality sampling and analysis plan that satisfies the provisions of article 6. Since most of the provisions of these proposed regulations are simply reflections of existing state and federal requirements, it is anticipated that the majority of permitted facilities will require only minor modifications to their existing monitoring programs. 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.

**Comment AI24 - Section 66261.3(e)(2)**

Commentor AI - California Manufacturers Association

Comment: "ISSUE: Classification of contaminated soil.

**Comment/Proposed Action:**

It is unclear under the proposed regulations whether excavated contaminated soil containing only characteristically hazardous waste may be classified as hazardous or nonhazardous in the same manner as other wastes. As a result, the cleanup of routine spills and leaks of hazardous materials and subsequent efficient management of spill residues could be impeded. We propose that the proposed regulations expressly allow soil that is contaminated with non-listed wastes be characterized in accordance with Article 3 in the same manner as process wastes."

Comment response: Several commentors raised questions regarding the classification of mixtures of hazardous waste or hazardous material with other substances. The Department has examined all the provisions addressing classification of mixtures (mixture rules) proposed in this package in light of the mixture rules contained in existing State and federal hazardous waste law. The Department has decided that proposed section 66261.3(e) is not only unnecessary to match the effect of existing law, it is also unclear by requiring the application of the vague statutory definition of "hazardous waste" to classify mixtures. Thus, the Department is deleting section 66261.3(e).

For further discussion of existing and proposed "mixture rules" see the response to comment I3.

Comment AI25 - Sections 66262.34, 66264.1 and 66265.1

Commentor AI - California Manufacturers Association

Comment: "The proposed regulations could be interpreted to require permits for on-site transfer of waste by generators. Regulating on-site transfer of waste would severely impact generators' ability to efficiently manage wastes. Further, the proposed regulations do not recognize the federal exemption for treatment in tanks by generators who accumulate waste on-site for less than 90 days. While some on-site treatment activities fall within the scope of the permit-by-rule for transportable treatment units, the inability to use a wider variety of treatment techniques or to conduct the treatment in stationary tanks which accumulate the waste in the first instance limits flexibility and make [sic] it more difficult to prepare waste for disposal off-site."

Comment response: See response to comment T29

Comment AI26 - Section 66261.4(e)&(f)

Commentor AI - California Manufacturers Association

Comment: "ISSUE: Treatability Studies

CITATION: 40 CFR 261.4(e) & (f)

**COMMENTS/PROPOSED ACTION:**

The proposed regulations fail to incorporate the federal exemptions for treatability study samples and samples undergoing treatability studies. The result could be that laboratories and other research facilities would have to obtain hazardous waste treatment permits and the cost of cleanups under CERCLA could be significantly increased."

Comment response: 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 AI27 - Section 66261.1(b)(2)(A)**

Commentor AI - California Manufacturers Association

Comment: "Classification of wastes as hazardous based on the Department's belief that they are hazardous."

Comment response: This provision is being altered to limit the Department's authority to classify wastes as hazardous based on the Department's belief that they are hazardous to the inspection and sampling authorities needed for equivalence to federal law. For further discussion of this point, see the response to comment I1.

**Comment AI28 - Section 66261.24 (a)(6)**

Commentor - California Manufacturers Association

Comment summary: "Reference to a new fish bioassay test."

Comment response: See response to Comment AF-12, Section 66261.24 (a)(6).

**Comment AI29 - Sections 66262.50 through 66262.60**

Commentor AI - California Manufacturers Association

Comment: "These areas require further work and attention by the Department."

Comment response: Because this comment is too broad and non-specific in content, please see comments and responses for all the above comments for the Department's changes to the subject regulations.

**Comment AI30 - 66270.14(m)**

Commentor: AI - California Manufacturers Association

Comment: "Require a quantitative risk assessment as part of a Part B application."

Response to comment: See response to comment T21.

**Comment AI31 - Section 66264.4**

Commentor: AI - California Manufacturers Association

Comment summary: The proposed regulation on the Department's ability to take enforcement action requires further work and attention by the Department.

Comment response: Although the proposed section conforms with corresponding federal regulation, it has retained its current enforcement authority pursuant to Health and Safety Code. Further, a statutory change/revision can not be made through authorization process. This comment, therefore, was not accommodated.

**Comment AI32 - Section 66265.4**

Commentor AI - California Manufacturers Association

Comment summary: Referenced section requires further work and attention by the Department.

Comment response: The comment is not very clear. Proposed section 66265.4 clarifies the Department's ability to take enforcement actions pursuant to Health and Safety Code. This section conforms to the corresponding federal regulation except that the reference to RCRA section 7003 has been changed to the corresponding Health and Safety Code section, because the State does not have authority to take enforcement actions under RCRA section 7003. Additionally, this change clarifies that the Department may pursue enforcement actions using the full range of its State statutory authority. This change is being made for completeness and clarity and does not in any way alter the Department's enforcement authority.

**Comment AI33 - Section 66270.1 (c)**

Commentor AI - California Manufacturers Association

Comment summary: This section proposes automatic State variance for federally delisted waste.

Comment response: Department concurs with the commentor's interpretation of the current proposed language of section 66270.1 (c). But the language of the first sentence of this section is being further modified to read "A permit is required for the "transfer", "treatment", "storage", and "disposal" of any waste which is a hazardous waste pursuant to section 66261.3." Also, be informed that the current proposed language of section 66261.3 has been further modified to state that if a waste is delisted by the Environmental Protection Agency then it does not have to obtain a variance from the State except if waste is hazardous by its characteristics. Therefore, pursuant to revised proposed language

of sections 66261.3 and 66270.1 (c), the State will allow automatic variance if: 1. the waste is a federally delisted waste, and 2. the waste is not hazardous by characteristics pursuant to Article 3 of Chapter 11 of these proposed regulations.

**Comment:** AI34 - Section 66261.7

Commentor AI - California Manufacturers Association

**Comment:** "Empty Containers"

The proposed regulations do not acknowledge existing Department policy which allows generators to (a) return unrinsed 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. This is a major flaw!.

When the existing regulations were proposed, there was a section (66506) which specifically identified empty containers as hazardous waste. As a result of negative comments, that section was withdrawn. Now, in the proposed revision, the issue is addressed in several places. First, in using strike out/underline format with 40 CFR 261.7, which exempts empty containers from hazardous waste management, is struck out and not replaced. Section 66261.101(b)(4) in the proposed regulations classifies empty containers as 'NON-RCRA Hazardous Waste'. Finally, section 66261, Appendix XII, establishes waste code numbers 512 and 513 for empty containers. It appears that the proposed regulations put us back where we started five years ago. Further, since the department is going beyond RCRA in its attempt to regulate empty drums, we believe this is a violation of the agreement we have had with the Department that the scope of legislation and regulations would encompass what is necessary to obtain RCRA authorization. Any other changes the Department feels are necessary to manage hazardous wastes in California are to be made in subsequent, and separate, legislation or regulation.

There are two problems with handling empty containers as hazardous waste. First, the handling and disposal costs add a significant operating cost for California industry as compared to industry in the other states, The second issue is drum recycling, which is both economically and environmentally superior to disposal of the drums.

In the Informative Digest for the proposal of the existing regulations, the Department attempted to justify the regulation of empty containers by recounting incidents in which contaminated drums have been used by the public for backyard barbecues, storage bins, and pontoons for homemade boats. While these are dangerous practice and must be prevented, regulating empty drums will not effectively do so.

Under current business practices there exists a strong incentive to recycle or to beneficially reuse empty drums. There are business operations which purchase contaminated, empty drums and recycle them for reuse. The direct reuse and the use of recycled drums results in a significant cost reduction compared to using new drums. Therefore, we believe that under present circumstances, the total amount of empty drums is disposed of in two ways, by reuse by industry, either directly or recycled, and a small number by the previously described dangerous practices caused by uninformed or careless individuals without the economic incentives which industry has for reuse.

The proposed regulation would not effect the uninformed or careless individuals but only industry which already has adequate incentive to properly manage empty drums. Therefore, the dangerous uses by individuals would not be eliminated. The added cost and inconvenience of the proposed regulation may provide a directive to some smaller businesses resulting in less control of contaminated drums than presently exists. Further, the additional administrative burden and cost of the proposed regulation to state agencies, local government and industry, much of which is small business, will be significant.

To summarize, discontinuation of the drum recycling industry in California would have several negative impacts:

- Economic and employment losses from the recycling industry
- Acceleration of depletion of available landfill space.
- Increased production of new drums, wasting an estimated 80,000 to 100,000 tons of steel per year, accelerating the depletion of a vital natural resource.

We strongly encourage the Department to add a definition of empty drum that is consistent with 40 CFR 261.7."

Comment response: The Department is partially accommodating this comment. The Department feels that existing waste classification regulations are unclear when applied to the classification of empty containers. However, adoption of the federal empty container regulations wholesale by the Department would require that the Department study those regulations and their effect in depth before this adoption. The Department is, therefore, adopting regulations based on the Department's understanding of existing law. These regulations address smaller containers in detail; however, the proposed regulation merely restates the statement in existing law, title 22, CCR, section 66796(b)(7), that contaminated drums are a recyclable hazardous waste type. That action, however, is completely consistent with the groundrules stated for this project. The Department has consistently stated that it will adopt regulations reflecting existing law; policies which were adopted without complying with the requirements of the administrative procedures act are not part of existing law. The adoption of a

radically different scheme towards classification and management of empty drums is thus outside the scope of this rulemaking.

The Department has been, however, studying the question of drum recycling and reconditioning and will soon publish a massive report summarizing its findings. The Department will then hold public workshops with all interested parties and will commence a rulemaking to adopt final regulations addressing contaminated drums.

The proposed regulations will not declare drums empty pursuant to 40 CFR section 261.7 to be automatically nonhazardous. If drums with as much as fourteen pounds of residual hazardous material could be disposed of in an ordinary landfill (the result of wholesale adoption of 40 CFR section 261.7), the Department would be inviting scavengers to "rescue" these drums from the landfill and would create the very hazards referred to by the commentor (use as barbecues, etc.).

#### **Comment AI35 Section 66261 Appendix II**

Commentor - California Manufacturers Association

Comment summary: "Missing is a method of preparation of non-friable monolithic solids. In 40 CFR 261, Appendix II, (A) (3) this type of material is to be subjected to the "Structural Integrity Procedure." By that method, non-friable solids are analyzed as a single piece. The lack of a similar instruction in the existing and proposed DHS regulations results in this section failing to comply with the Clarity Standard found at section 11349.1 (a) (3) of the California Government Code. We encourage you to add a fourth type for the preparation of non-friable monolithic solids consistent with the 40 CFR."

Comment response: The Department disagrees that the lack of a method similar to the Structural Integrity Procedure in the proposed regulations fails to comply with the Clarity Standard in section 11349.1 (a) (3) of the California Government Code. To conform with the current level of stringency in State regulations, the Waste Extraction Test as proposed in Appendix II of Chapter 11 was incorporated verbatim from existing title 22, Cal. Code Regs., section 66700 except for the specific changes cited in the Initial Statement of Reasons, pages B-84 and B-85. 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, the Structural Integrity Procedure is not appropriate for general application in classification. As explained on page 107 of the Department's rulemaking (R-45-78), "...EPA acknowledges that the structural integrity test does not predict weatherability of a waste (EPA 1980g). Additionally, the federal structural integrity test does not predict abrasion and grinding potential nor long-term storage or postdisposal phenomena listed above. Also, it is designed for

testing solid pieces of a specified shape and size, and it is not directly adaptable to testing smaller, variable shaped particles, singly or collectively." The Department's rulemaking (R-45-78) further explains that "...it is the Department's position that structural integrity tests, until developed and refined to address waste management scenarios, are not appropriate to predict the hazardousness or nonhazardous of waste." The EPA has not modified the test procedure since its adoption into the federal regulations. The current and proposed regulations provide flexibility such that structurally resistant materials may be evaluated on a case-by-case basis by the Department according to the variances procedures in title 22, Cal. Code Regs., section 66260.210 or according to the the classification procedures in title 22, Cal. Code Regs., section 66260.200 (f). Both regulatory options have been exercised in the past. These options are the appropriate way to address the issue of non-friable solids. Additionally, there is a provision in the footnote to title 22, Cal. Code Regs., section 66261.24 (a)(2)(A) that in the case of asbestos and elemental metals, the concentration limits apply only if the substances are in a friable, powdered or finely divided state. The modification is rejected.

#### Comment AJ1 - CEQA

Commentor AJ - Russ Baggerly

Comment: "The adoption of these regulations is a project, in our opinion, under the California Environmental Quality Act ...

"Allowing for solid waste unit operators the latitude to self regulation is representative of an inherent weakness in the regulations. The environment will not be afforded the fullest possible protection within the reasonable scope of the statutory language with this self regulation. ...

"... These regulations must be subject to CEQA review.

"The substantive changes that you have identified, Mr. Chairman, including the background monitoring and the reduction of the number of constituents to be monitored, points to a perceived relaxation of the regulatory framework. We believe that this is a project under CEQA and should have adequate review under that statute."

Comment response: The Department agrees that this rulemaking is a project under the California Environmental Quality Act. The Department prepared an initial study of the changes in the proposed rulemaking which served as the basis for a negative declaration. The negative declaration was circulated for public review from April 17 to May 17, 1990. Each of the substantive changes to the Department's existing regulations is addressed in the initial study. The comment referring to "solid waste unit operators" is not applicable to the Department's rulemaking because the Department's regulations do not apply to solid waste.

## Comment AK1 - Water Quality Monitoring and Response Programs

Commentor : Doris Black

Comment: "Our members are concerned about the proposed regulations will will result in greater public risk at Class I and other sites and their environs. Historically, the containment failure of what the new regulations term "Waste Management Units" is total. No Class I site has avoided leakage or its results in the surrounding area and we assume that this will continue at the Class I and other sites and because:

1. Self regulation by site operators, which has been relied upon as a control mechanism, will be continued and utilized to an even greater extent.

In areas where the private sector, with its attendant profit motive, controls dump operation, this presents an even greater problem than where dumps are publicly controlled. Where a private owner has a monopolistic advantage, this threat is even greater.

In Ventura County, where Waste Management Incorporated is expected to have a monopoly on dump operations in less than five years, any code wording that increases the operator's self-regulatory powers is worrisome. We need more, not less public control over both water quality monitoring and response programs."

Comment response: The Department does not agree that the proposed regulations rely upon "self regulation". It is possible that the commentor was confused by the description of the proposed interim status regulations as a "self-implementing" version of the requirements for permitted facilities. The Department must continue to rely upon self-implementing regulations for interim status facilities until permits are issued for those facilities. Under the proposed regulations, the owner or operator is required, with or without Departmental oversight, to design and implement water quality monitoring programs that will satisfy the requirements in the regulations. Failure to do so constitutes noncompliance with the regulation. It is the Department's intention to review all water quality sampling and analysis plans and to require modifications as necessary to protect human health and the environment. Failure of the Department to perform this function does not, however, relieve the owner or operator of the responsibility to provide appropriate water quality monitoring.

It is also possible that the intention of this comment is to recommend that the Department assume responsibility for designing and implementing monitoring programs at all hazardous waste disposal facilities. The Department does not have either the personnel or the funding to perform such a monumental task. Further, the Department is not convinced that such a dramatic change is warranted. The proposed regulations require that the owner or operator design, propose, and implement a water quality monitoring program that is submitted to the Department for approval. The Department may modify the monitoring program as

necessary to protect human health and the environment. It is the intention of the Department to continue to provide oversight, surveillance and enforcement of the regulations and the conditions in the permit.

**Comment AK2 - Information access**

Commentor AK - Doris Black

Comment: "2. There is no assurance that regulatory enforcement data will be more available than it has been in the past or even that it will be archived publicly. It is difficult for individuals or groups who have concerns to access materials that may be at the dump site and under private control.

"While we're sure that our representatives and other public officers can inspect the appropriate documents, we cannot see interested citizens doing so. There are safety factors as well as convenience considerations when a citizen wants to look into monitoring or response information on a site, at the site."

Comment response: See Response to Comment U2.

**Comment AK3 - CEQA**

Commentor AK - Doris Black

Comment: "3. There seems to be no provision for environmental review of the proposed revision though it can be nothing but a project under CEQA. ..."

Comment response: See Response to Comment U3.

**Comment AL1**

Commentor AL - Nancy Hayes  
Morrison & Foerster

Comment AL1: NEMA does support the goals and objectives that are reflected in this important regulatory package. The comments that I have today focus on fluorescent and what is called high intensity discharge lamps, and they are really directed more to the Department of Health Services. They don't relate specifically to the groundwater monitoring portion. Also, they relate, insofar as any spoken comments, to sections 66261.4 and 66261.2.4.

I should say for starters that what we are talking about, probably the most common form, is above us today and it is found throughout office buildings in the United States, the common

fluorescent light bulb. Fluorescent and HID lamps provide one of the most efficient and environmentally sound forms of lighting that we have today. Perhaps the best example is that they produce two to ten times more lighting per the same amount of energy, as an incandescent light.

I want to limit my comments about these lamps to just a highlight of the written comments that we have already submitted out at the front desk.

Our concern with the regulations relates specifically to the fact that these lights contain very minute amounts of mercury, and the amounts of mercury that are in the maps cannot be reduced. It's essential to the operation of the lamp.

Testing of the lamps has shown in the past that these lamps are nonhazardous under all the State and Federal criteria without one single exception and that's the total threshold limit concentration value which is in the existing regulations and if it were carried over into the proposed regulations if they are adopted the way they are now.

The degree to which these lamps exceed that amount is extremely slight, and NEMA does not believe that this exceedance warrants classification as a hazardous waste. Perhaps the best example, and there is more information in the comments, is because these lamps are typically disposed of in land fills. They have been disposed of in sanitary land fills throughout the United States, and the key avenue of exposure that would be of concern there would be through leaching, and these lamps have been demonstrated to pass both the Federal and State leaching tests as well as all the other tests of hazardousness[ous] [sic]

What NEMA wants to ask for is relief from the requirement to classify managed leachate as hazardous, and there is more detailed information on this in the comments that are submitted in writing.

The reason that we believe this relief is necessary is first because there have been studies undertaken, but to date found no commercially viable way to recycle the mercury in the lamps so we can avoid landfilling.

It is also impossible to eliminate or reduce the mercury and it wouldn't be an environmentally desirable result to eliminate the lamps because they are the most energy efficient means of producing light.

What our concern is, is that we feel given the fact that these lamps do not pose a hazard that the requirement to classify as such the lamps consumes tremendous quantities of land fill space that could be used more beneficially for those wastes that are actually hazardous. Therefore, we have submitted several comments suggesting changes to the regulations that we think would address these concerns.

In a nutshell one change would be to indicate in section 66261.4(b) that these are excluded from wastes that are defined as hazardous.

Another alternative would be to indicate in a table of CCIC values that the mercury level for CCIC does not apply to fluorescent and HID lamps.

We also have in those comments several other comments that address more generally some ambiguities that arise in the waste classification provisions of the regulations, but they are comments that are not related specifically to these, or not restricted specifically to these lamps, but will be important for waste generators more generally, and I won't raise those here, but they are detailed in the comments that have been submitted.

Comment response AL1: See response to comment N1

#### Comment AM1 - Chapter 11

Commentor AM - Alvin Skyles for General Dynamics

Comment: "The first issue is empty drum management. The proposed regulations do not specifically address the management of empty drums that are (1) sent to drum recyclers; (2) returned to the original manufacturer.

For the past nine years the practice of the Department of Health Services is to allow generators to ship these empty drums with less than one inch to State approved drum recyclers or back to the original manufacturer. We felt the proposed regulations should allow this to continue.

If they were considered a hazardous waste and they ended up being crushed and sent to landfills that are already few in number and with space highly limited.

Drums themselves are of extremely good value to recycle and reuse. so that obviously is something that should be considered."

The drums are sent to a drum recycler. They have less than one inch, they are empty. The federal definition of an empty drum is an inch or less. And so what we are saying is adopt the federal empty drum definition.

If you triple rinse them on site you generate a lot of waste. It's a lot easier to crush and send them to a land fill than triple rinse."

Comment response: The Department is partially accommodating this comment. The Department is proposing section 66261.7 which addresses classification of empty containers. This section repeats the statutory exemption from regulation (Health and Safety Code

section 25143.2(d)(6)) for contaminated containers returned to a supplier of the hazardous material previously contained in that container. Then, this section states that other drums are a recyclable hazardous waste consistent with existing title 22, section 66796(b)(6).

The Department has been, however, studying the question of drum recycling and reconditioning and will soon publish a massive report summarizing its findings. The Department will then hold public workshops with all interested parties and will commence a rulemaking to adopt final regulations addressing contaminated drums.

#### **Comment AM2**

Commentor - Alvin Skiles, General Dynamics

Comment AM2: The second comment regards generator waste reduction. Again the proposed regulations appear to not allow the generator to perform elementary utilization or waste water treatment that discharges to a POTW. Again the federal regulations exempt these types of treatment throughout the other states. Since there is much pressure and it will just increase in magnitude to have generators reduce this waste, it certainly makes sense to allow them to do some sort of reduction in the treatment area that is not an environmental risk and does not require permitting so that we can achieve waste reduction and eliminate sending waste to landfills.

Comment response, AM2: See response to comment T34

#### **Comment AN1**

Commentor - Edmund Duncan

Comment summary: "Mercury lamps in landfills is a disgrace. I urge you to control the disposal of the waste. I also ask you to realize there is a huge amount of mercury batteries being put in landfills. The first time we have an earthquake procedure, we are suggesting mercury batteries are an element. This is a death dealing hazard, with a very small element causing huge problems. I suggest that you have to evaluate the interaction of the mercury both in total quantities and with some other elements of the land fill to have an idea as to what the impact is."

Comment response: The commentor's comment is not within the scope of this rulemaking package; however, the Department shares in the commentor's environmental and public health concern. Regarding the disposal of mercury lamps and batteries to landfills, the Department has established a regulatory threshold value for mercury concentration in wastes. If a waste containing mercury exceeds the

regulatory threshold, it is subject to the Department's hazardous waste regulations, and therefore, would require disposal at a permitted treatment, storage or disposal facility. The Department recognizes that households and small businesses may be generating hazardous mercury lamp and battery wastes which they are disposing of at municipal landfills. Households and small businesses generally generate small quantities over sporadic time periods, and because of that, make enforcement by the Department difficult. Nonetheless, if the wastes are hazardous, they are subject to regulation. In the unfortunate event of an earthquake, if mercury or any other hazardous constituent was found to be a threat to the public health and environment, the Department, as well as other State agencies, such as the Regional Water Quality Control Boards and the Office of Emergency Services would work towards ensuring that the public health and environment be protected. No change in regulation is proposed based upon this comment.

#### **Comment AN2**

Commentor AN - Edmund Duncan

Comment summary: With respect to the comments we just had on the drums, I wonder if there is a process of some sort or maybe an osmosis process to reduce that, even that one inch that we had a discussion on.

Comment response: The Department is including drum regulations in this package to clarify the question of classifying empty containers. A discussion of drum recycling processes is beyond the scope of this rulemaking. However, note that the Alternative Technology Division of the Department's toxics program actively investigates and promotes the adoption of all types of processes to reduce the hazards from hazardous waste.

#### **Comment AN3 - Review period**

Commentor AN - Edmund Duncan

Comment: "I still would like to have a copy of the publication we are dealing with today and suggest that maybe we ought to have another fourteen days or so for additional comments, and thank you very much. If you have any questions, I would be very happy to clarify."

Comment response: A copy of the proposed regulations was provided to the commentor at the close of the hearing. An extension to the public comment period was not granted for the reasons discussed in the response to Comment D1.

**Comment AO1 - Water Quality Monitoring and Response Requirements**

Commentor: Joseph Hower

Comment: "I would like to support the concept that the gentleman from the County Sanitation Districts had about being able to designate waters as either having beneficial use or no beneficial use. We are currently working with a client that's got ground water under a site that is not now or ever has been useful for anything that we can come up with, and are potentially looking for large sums of money to do remediation that it doesn't appear will help anyone, and I think there ought to be a mechanism to allow saying that this water is just not going to be used for anything, so why spend a lot of money to clean it up?"

Comment response: The Department agrees with the commentor that it is important to consider the beneficial uses of water when establishing concentration limits for a corrective action program. (That requirement has been modified slightly and moved to section 66264.94(e)(3).) The proposed regulations also require that concentration limits be established that are protective of human health and the environment. The proposed regulations will only allow the Department to establish concentration limits greater than background for a corrective action program if all of the requirements of section 66264.94 are satisfied.

**Comment AP1 - Section 66260.10**

Commentor AP - Frank Maccioli for Texaco

Comment: "Frank Maccioli. I am a regulatory specialist with the producing division of Texaco, USA. We are the people that bring the oil out of the ground. We are not with the refining of oil.

I wasn't planning on talking at all. One of our biggest concerns with the title 22 Codification, which is what my clients are about concerns the self certification provisions for delisting wastes as nonhazardous, and from what I have been able to read in what has been mailed to me, it seems clear to me that staff's intent is to maintain that self certification for non RCRA wastes.

However, I am a bit troubled by proposed section 66260.10 which defines the various terms, in particular the definition of non RCRA hazardous waste. In that proposed definition there is a requirement that a generator must demonstrate to DHS that a waste is non RCRA waste, and until he supposedly receives concurrence from DHS, he has to handle that as RCRA waste. We are concerned that that will throw some roadblocks in the self certification process.

In the Statement of Reasons there was a discussion of that new definition in reference to the Health and Safety Code, section 25117.9, which also defines non RCRA wastes, I believe. However,

in that definition it says that the generator determines that the waste is non RCRA. That is a little bit different than demonstrating to DHS, and I think if the definition incorporates the Health and Safety Code language rather than what was proposed, I think that would satisfy our concerns."

Comment response: The Department is accommodating this comment by adopting the language of the statutory definition of "non-RCRA hazardous waste". The Department affirms the self certifying nature of the waste classification regulations.

#### **Comment AS1 - CEQA**

Commentor AS - Sharon Duggan

Comment: "The concern of my client is that there does not appear to be any CEQA compliance with respect to the consideration of the adoption of these regulations, and it seems quite obvious from the definitions in the CEQA that this is a discretionary project that both the Department of Health Services and the State Water Resources Control Board is engaging in and that, therefore, there is some CEQA review that is necessary."

Comment response: See Response to Comment AJ1.

#### **Comment AS2 - Water Quality Monitoring and Response Requirements**

Commentor - Sharon Duggan, Citizens of the Ojai

Comment: "Are the concentration limits that are used, are those adequate?"

Comment response: Under the proposed regulations, concentration limits will be established at background levels unless the owner or operator of a facility submits a proposal to establish a concentration limit greater than background for a corrective action program with sufficient documentation to support the conclusion that all of the requirements of section 66264.94 have been satisfied. Briefly, those requirements include:

- 1) It must be technologically or economically infeasible to achieve the background value;
- 2) The proposed limit must be protective of human health and the environment as determined through the risk assessment process outlined in section 66264.94(d);
- 3) The proposed limit must be the lowest limit that is technologically or economically achievable; and
- 4) The proposed limit must not violate water quality objectives or interfere with the beneficial uses established by the Regional Water Quality Control Boards.

**Comment AS3 - Water Quality Monitoring and Response Requirements**

Commentor: Sharon Duggan, Citizens of the Ojai

Comment: "Under Section 2550.4, subdivision (c)(1), there is the ability for the regional Boards to make the determination that degradation is inevitable. That type of determination certainly poses concern, so again, in terms of CEQA review, that could possibly be explained further."

Comment response: The Department agrees that public involvement through the CEQA process will be important whenever concentration limits greater than background are proposed for a permitted facility. Since a permit modification is required to implement a corrective action program, public involvement is assured.

**Comment AS4 - Water Quality Monitoring and Response Requirements**

Commentor - Sharon Duggan, Citizens of the Ojai

Comment: "Permitting Dischargers to select the best indicators of waste may have a potential impact if the discharger is limited in its determination."

Comment response: The owner or operator is required to submit a proposed list of monitoring parameters for each regulated unit at the facility. The Department will review, and approve or modify this list as necessary to protect human health and the environment.

**Comment AS5 - Water Quality Monitoring and Response Requirements**

Commentor - Sharon Duggan, Citizens of the Ojai

Comment: "Section 2550.8, subdivision (c), the dischargers establish the background values which certainly is critical in terms of the initial commencement of monitoring and any further controls. That may pose a potential for problems."

Comment response: Section 66264.97 requires that the owner or operator collect and submit to the Department all data necessary to select an appropriate statistical method, and to establish the background value for each constituent of concern. The owner or operator must propose appropriate statistical methods and background values to the Department for review, and modification or approval. The Department maintains the final authority to specify background values in the facility permit.

**Comment AS6 - Water Quality Monitoring and Response Requirements**

Commentor - Sharon Duggan, Citizens of the Ojai

Comment: Commentor is concerned that too much discretion is left up to the discharger so that "such things as the type of discharge, the intensity, the time period" ... do not have to be provided.

Comment response: In response to this and other comments, section 66264.98(k)(5)(D) has been added to require that the owner or operator submit, as part of the application for a permit modification to establish an evaluation monitoring program, a detailed description of the measures to be taken to assess the nature and extent of the release from the regulated unit. This affords both the Department and the public (through the permitting process) the opportunity to review assessment plans prior to implementation.

**Comment AS7 - Water Quality Monitoring and Response Requirements**

Commentor - Sharon Duggan, Citizens of the Ojai

Comment: "Under subdivision 1, the question is whether or not the sampling and analysis for all the constituents of concerns after terminating a corrective action program, whether one year would be a sufficient period of time for that analysis."

Comment response: After successful completion of corrective action, the owner or operator must remain in a corrective action program for one year to verify that corrective action was successful. After that period of time, the owner or operator must re-institute a detection monitoring program to monitor for future or continued releases. This is necessary so that the appropriate response requirements found in section 66265.98 are applicable to the regulated unit if another release is detected. Monitoring under this program must continue throughout the compliance period.

**Comment AS8 - Water Quality Monitoring and Response Requirements**

Commentor - Sharon Duggan, Citizens of the Ojai

Comment: "Under subdivision (1)2, is there a definition for 'is not likely'? Should there be stricter wording?"

Comment response: The requirement in proposed section 66264.100(i)(2) was originally adapted from a similar requirement in existing title 22. Upon reflection, this provision has been entirely eliminated because, as noted in this comment, the language is ambiguous and because the Department does not wish to allow an owner or operator to remain in a corrective action program longer than necessary to perform and verify corrective action. After

successful completion of a corrective action program, the owner or operator must reinstitute a detection monitoring program so that the appropriate requirements for response to a subsequent release apply.

**Comment AS9 - Water Quality Monitoring and Response Requirements**

Commentor - Sharon Duggan, Citizens of the Ojai

Comment: Commentor recommends that discharger facility operating records be provided for public review, perhaps through a public library, to better enable public access to monitoring records.

Comment response: The Department understands the problem posed by the commentor with respect to difficulties experienced in reviewing Department records during weekdays. The Department commits that in instances where citizens provide the Department with a request in advance, the Department will make records available after business hours on weekdays or on a weekend, if necessary to assure that members of the public have access to Department records. The Department will not, however, place a notice in the newspaper when new data is submitted to the Department.

**Comment AS10 - CEQA**

Commentor AS - Sharon Duggan

Comment: "Finally, in terms of the CEQA review, if, and I believe that your regulations -- I'm not certain of this -- but if they do come under 21[0]80.5, there is a requirement that you consider feasible alternatives so that if you did engage the CEQA process as we believe is necessary, then in terms of these comments as well as others I am sure you will receive, you would be able to do that alternative analysis to determine what is the feasible alternative for the lease environmental hazards."

Response to Comment: The Department's rulemaking does not fall within this purview of Public Resources Code section 21080.5. The Department complied with the requirements of CEQA as discussed in the response to comment AJ1.

**Comment AT1 - Section 66262, Appendix I**

Commentor AT - Bruce Campbell, Private Environmentalist

Comment summary, AT1.1: The commentor is concerned about the hierarchy for the California Hazardous Waste (HW) Codes, which are located in Chapter 11, section 66261, Appendix XII. The section referenced (66262, Appendix) contains the instructions for

completing the manifest document. This appendix references Appendix XII which contains the California Waste Codes. The commentor feels that in order to standardize information for various reports generated, and surveys, the California HW codes should be put in a complete hierarchy.

Comment response: See response to Comment E1.1

Comment summary, AT1.2: The commentor further states that the proposed regulations should have clarification that restricted codes take precedence over non-restricted codes since this is not specified in the current regulations.

Comment response: See response to Comment E1.2

**Comment AT2 - Section 66261, Appendix XII**

Commentor AT - Bruce Campbell, Private Environmentalist

Comment summary: The commentor states that the California Waste Codes 741 and 751 refer to Halogenated Organic Compounds. The commentor would like it specified in the regulations whether this includes all HOC's or just the same HOC's which are listed in Appendix III of Chapter 66268.

Comment response: See response to comment E1.4

**Comment AT3 - Section 66261, Appendix XII**

Commentor AT - Bruce Campbell, Private Environmentalist

Comment summary: The commentor states that presently there are no specific California Waste Codes for gases. Further, the commentor would like to know if there are any plans to generate a new code for gases.

Comment response: The Department agrees that specific California Waste Codes for gases is desirable. However, it is outside the scope of the current rulemaking.

**Comment AU1 from public hearing (no specific section reference)**

Commentor - Mr. Bruce Campbell

Comment summary: The commentor states that he heard a statement that the proposed landfill regulations for hazardous and non-hazardous wastes are virtually identical. The commentor also

expressed concern about the spread of contamination due to the failure of containment caps over landfills.

Comment response: The statement that the commentor heard was in error. These proposed landfill regulations apply only to hazardous waste landfills, since the Department has no jurisdiction over those landfills which do not contain hazardous wastes. The spread of contaminants that the commentor alludes to are due to many reasons, primarily the lack of containment structures beneath old hazardous waste disposal units, not the failure of caps placed over closed units. Due to the nature of the comment, the Department is unable to respond more specifically.

#### Comment AU2

Commentor AU - Bruce Campbell

Comment summary: "Anyway, I urge mass recycling to reduce the volume of materials going to landfills in general, toxic use reduction to reduce the production of that and need for that to go to landfills, and we need a recycling approach and reduction approach because the incineration approach is even more dangerous, and yet there is the syndrome that it is all right to produce these masses of toxics and other wastes which basically threaten our planet.

Thank you."

Comment response: The commentor addressed no specific section of the proposed regulations, but instead apparently advocated the following (paraphrased here):

- o Promotion of recycling to reduce the quantities of materials disposed in landfills in general;
- o Reduction in use of toxic materials to reduce the quantities of such materials requiring disposal in landfills;
- o Rejection of incineration in lieu of recycling and waste reduction as a possible solution to the problem of managing toxic materials; and
- o Imposition of sanctions on production of toxic materials.

The DHS has already addressed most of these issues, directly or indirectly, at least to some extent. However, the first comment [i.e., the need for mass recycling to reduce the quantity of (nonhazardous) material going to landfills in general] relates to an issue beyond the jurisdiction of the Department and cannot be accommodated in this rulemaking. Nevertheless, Health and Safety Code section 25150 does authorize the Department to adopt regulations governing the recycling of hazardous wastes, and Health

and Safety Code section 25170 also requires the Department to promote recycling of hazardous wastes. Accordingly, the Department's existing and proposed regulations in proposed Chapter 16 provide for (among other features) selective reductions in the requirements for obtaining permits for resource recovery facilities, consistent with health and environmental protection, in order to promote the establishment of such facilities (e.g., proposed sections 66266.8 and 66266.9).

Second, although the Department generally has no authority to limit the use of toxic materials that are products, not wastes, the Department's proposed regulations limit the types and concentrations of hazardous wastes (if any), resulting from the use of such materials, that may be disposed in landfills (e.g., proposed Chapter 18). These regulations can indirectly work to reduce the use of toxic materials by reducing the options for disposal of the hazardous residues of their use. (Presumably the use of toxic materials would more likely produce hazardous wastes than the use of nontoxic materials.) A reduction in options for waste disposal would generally be expected to increase waste generators' costs, because supply and demand would probably drive up the costs of the remaining options. Obviously, waste generators who do not produce hazardous wastes subject to the Department's land disposal restrictions would be expected to be able to save money and to charge less for their products than their competitors probably would. Thus, the regulations can indirectly reward waste generators who do not use certain toxic materials.

Third, the Department has not advocated incineration as a substitute for recycling and waste reduction, but as an important alternative to the land disposal of hazardous wastes that cannot be reduced (i.e., prevented or recycled), or that are residues of recycling or of other treatment processes. Thus, the proposed regulations (e.g., proposed Chapters 14 and 15) include incinerators among the devices eligible for permits to operate as hazardous waste facilities. However, the regulations impose strict standards on those incinerators to ensure that they do not become the dangerous facilities which the commentor apparently envisions.

Fourth, the Department generally has no authority to place sanctions on the production of toxic materials in order to convey the message to industry and others that it is not all right to produce "masses of toxics and other wastes" which threaten the environment. However, as discussed above, the proposed regulations can indirectly discourage the production of those materials, because the regulations restrict the land disposal of hazardous wastes (if any) resulting from the use of such materials. However, not only the land disposal restrictions, but also the Department's permit, record keeping and reporting, financial assurance, and other requirements (if applicable), all of which affect only persons who manage hazardous wastes, more likely add costs to the use of toxic materials (presumably more likely to produce hazardous wastes), versus the use of nontoxic materials (presumably less likely to produce hazardous wastes). Thus, the Department's regulations can indirectly discourage the use of toxic materials.

In summary, within the scope of the Department's statutory authority and this rulemaking, the proposed regulations, as written, accommodate, at least to some extent, the commentor's concerns.

**Comment AV1 - CEQA**

Commentor AV - Lee Hudson

Comment: "However, you did say earlier and I appreciate that we would all like to be brief, but the concern we have heard from the oil industry, and I would like simply to say that I second what they have said. I just feel uncomfortable that someone from the environmental community has not had an opportunity to review this in depth. I don't have time to do that but I would certainly request that you review the CEQA requirements and that might give us all time to give this more consideration."

Response to Comment: See Responses to Comments D1 and U3.

**Comment AW1 - Water Quality Monitoring and Response Requirements**

Commentor: Pat Baggerly, Citizens of the Ojai

Comment: Commentor expressed concern that Class I landfills leak and that the self-monitoring structure in regulation should not be relied upon. "Why aren't regulations being proposed that are an improvement on the self-monitoring structure?"

Comment response: It seems that the intention of this comment is to recommend that the Department assume responsibility for designing and implementing monitoring programs at all hazardous waste disposal facilities. The Department does not have either the personnel or the funding to perform such a monumental task. Further, the Department is not convinced that such a dramatic change is warranted. The proposed regulations require that the owner or operator design, propose, and implement a water quality monitoring program that is submitted to the Department for approval. The Department may modify the monitoring program as necessary to protect human health and the environment. It is the intention of the Department to continue to provide oversight, surveillance and enforcement of the regulations and the conditions in the permit.

**Comment AW2 - General**

Commentor AW - Pat Baggerly, Citizens of the Ojai

Comment: "We would also like to know what is the relationship of these regulations to proposition 65? Will the adoption of these regulations preempt Proposition 65 requirements? Will the compounds and classes of compounds that will fall under the discharge provision of Proposition 65 in the future be required to be monitored by the proposed regulations?"

Comment response: There is no direct relationship between Proposition 65 (Chapter 6.6 of Division 20 of the Health and Safety Code) and the regulations proposed in this rulemaking. The regulations proposed in this rulemaking will not preempt Proposition 65 requirements. It is possible that a compound or class of compounds that falls under the discharge provisions of Proposition 65 will be monitored under a program established pursuant to the proposed regulations. If a material is being managed in a regulated unit, and that material is subject to the discharge provisions of Proposition 65, then it is very likely that the material will be a constituent of concern for purposes of the groundwater monitoring requirements in proposed Chapters 14 and 15. It is also possible that toxicological determinations made by the Science Advisory Board for Proposition 65 could result in new chemicals or compounds being classified as hazardous wastes pursuant to the Department's waste classification regulations. This rulemaking, however, is being undertaken to implement Chapter 6.5 of Division 20 of the Health and Safety Code and not Chapter 6.6 of Division 20 of the Health and Safety Code.

**Comment AW3 - Toxic Pits Cleanup Act**

Commentor AW - Pat Baggerly, Citizens of the Ojai

Comment: "Has the Toxic Pits Cleanup Act of 1984 been incorporated fully into these regulations?"

Under general monitoring requirements section 2550.7(e) on page 40 it says that -The regional board shall specify in the waste discharge requirements when the data shall be submitted for review."

Comment response: The proposed regulations do not specifically incorporate the Toxic Pits Cleanup Act of 1984. However, several of the proposed regulations in Chapter 18 have been drafted to be consistent with the prohibitions and restrictions in the Toxic Pits Cleanup Act of 1984 (Health and Safety Code section 25208 et seq.).

**Comment AW4 - Water Quality Monitoring and Response Requirements**

Commentor: Pat Baggerly, Citizens of the Ojai

Comment: Commentor recommended that a requirement be set into the regulations requiring all information submitted by the landfill operator to be available in a public library to increase public access to the information.

Comment response: The Department understands the problem posed by the commentor with respect to difficulties experienced in reviewing Department records during weekdays. The Department commits that in instances where citizens provide the Department with a request in advance, the Department will make records available after business hours on weekdays or on a weekend, if necessary to assure that members of the public have access to Department records. The Department will not, however, place a notice in the newspaper when new data is submitted to the Department.

**Comment AW5 - Water Quality Monitoring and Response Requirements**

Commentor: Pat Baggerly, Citizens of the Ojai

Comment: "We would like to know what is to prohibit a discharger from establishing a high background value?"

Comment response: Section 66264.97 requires that the owner or operator collect and submit to the Department all data necessary to select an appropriate statistical method, and to establish the background value for each constituent of concern. The owner or operator must propose appropriate statistical methods and background values to the Department for review, and modification or approval. The Department maintains the final authority to specify background values in the facility permit.

**Comment AW6 - Water Quality Monitoring and Response Requirements**

Commentor: Pat Baggerly, Citizens of the Ojai

Comment: Commentor questioned why it is left up to the discharger to determine what information, type, intensity, time period, etc. is to be collected and analyzed.

Comment response: In response to this and other comments, section 66264.98(k)(5)(D) has been added to require that the owner or operator submit, as part of the application for a permit modification to establish an evaluation monitoring program, a detailed description of the measures to be taken to assess the nature and extent of the release from the regulated unit. This affords both the Department and the public (through the permitting

process) the opportunity to review assessment plans prior to implementation.

**Comment AW7 - Water Quality Monitoring and Response Requirements**

Commentor - Pat Baggerly, Citizens of the Ojai

Comment: "How does one know how to determine the spatial distribution if you don't have more extensive and tighter regulations in place?"

Comment response: In response to this and other comments, section 66264.98(k)(5)(D) has been added to require that the owner or operator submit, as part of the application for a permit modification to establish an evaluation monitoring program, a detailed description of the measures to be taken to assess the nature and extent of the release from the regulated unit. This affords both the Department and the public (through the permitting process) the opportunity to review assessment plans prior to implementation.

**Comment AW8 - Water Quality Monitoring and Response Requirements**

Commentor: Pat Baggerly, Citizens of the Ojai

Comment: "We would like to know about the memorandum of agreement or the memorandum of understanding between the Department of Health Services and the State Water Resources Control Board used to implement these regulations..." Commentor further expressed the desire to comment on the operating agreement between the agencies.

Comment response: The Department has a memorandum of agreement with the State Water Resources Control Board regarding the implementation of the hazardous waste management responsibilities bestowed by the Legislature on both agencies. This document is several years old and is available upon request. Any of the provisions included in this document are available for comment by the public. However, it should be noted, that the memorandum of agreement is not part of this rulemaking and comments on it will not be accepted or answered as part of this rulemaking.

**Comment AG1**

Commentor AG - American Independent Refiners Association

Comment summary: "Small and independent refiners should be entitled to use treatment units on a cooperative basis in a manner similar to the exemption set forth in Health and Safety Code Section [sic] 25143.2(d)(2)(C).

Health and Safety Code Section [sic] 25143.2(d)(2)(C) allows refineries to recycle oily waste whether generated onsite or managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary or the corporate parent of the generator. This exemption is effective for major oil companies which can accumulate waste from a variety of sources to take advantage of the economies of scale, and treat the oily waste cost-effectively. Small refiners each individually generate too little waste to justify economically the type of recycling authorized by Section [sic] 25143.2(d)(2)(C). Cumulatively, however, they may be able to recycle cost effectively material that individually would not otherwise be recycled. Accordingly, AIRA [i.e., the commentor] urges the Department to authorize a cooperative treatment exemption for small and independent refiners that would authorize the small and independent refiners to enter into the same activities as major oil companies with operations at different locations. This would reduce the amount of waste disposed of in landfills and ensure that the best demonstrated available technologies are used for oily wastes. In light of the pending land disposal ban and other upcoming regulatory restrictions, AIRA would appreciate the opportunity to meet with technical and legal representatives of the department [sic] to accomplish the foregoing in a timely manner."

Comment response: The Department cannot accommodate this comment, because this rulemaking is intended primarily to bring state regulations into conformance with corresponding federal regulations. Therefore, the commentor's recommended expansion of the existing statutory exemption for refineries recycling their oily wastes pursuant to Health and Safety Code section 25143.2(d)(2)(C) is outside the scope of this rulemaking.

**Comment AG2**

Commentor - American Independent Refiners Association

Comment summary: "AIRA supports the Joint Comments on the Department of Health Services Proposed Title 22 regulations ("Joint Comments"). We wish to emphasize the need for an exemption as set forth in sections 4 and 8 of the Joint Comments. An interpretation which would require a permit for such treatment would be particularly difficult for AIRA members to meet because of the limited resources available to small and independent refiners. The