FINAL STATEMENT OF REASONS

Permit by Rule Regulations for Permanent Household Hazardous Waste Collection Facilities (R-95-03)

Existing Federal law exempts household hazardous waste from the regulations applicable to other types of hazardous waste [See Title 40, Code of Federal Regulations(40 CFR), Section 261.4(b)]. Current State law does not exempt household hazardous waste from regulation, and requires any hazardous waste storage facility to obtain a permit or other grant of authorization from the Department of Toxic Substances Control (Department); see Health and Safety Code (HSC) sections 25201 and 25123.3. In California, storage facilities accepting household hazardous waste are regulated, although the household hazardous waste producer is exempted from generator requirements.

In addition to the "full" permitting process applicable to federally-regulated facilities, the Department of Toxic Substances Control has a "tiered permitting process" which includes "standardized permit" and "permit by rule"(PBR) elements, both of which are easier to acquire than full permits. A standardized permit requires the applicant to submit an operation plan to the Department for approval before operating the facility. The standardized permit is issued only after careful technical review and approval of all permit documentation. Under PBR, operators of specified hazardous waste facilities are deemed to have a permit if they meet certain criteria and comply with specified requirements.

Permanent household hazardous waste collection facilities (PHHWCF) are operated by public agencies or their contractors, and provide the public with opportunities for the proper disposal of household hazardous wastes. Wastes from conditionally exempt small quantity generators (CESQGs) are also accepted at some of the PHHWCFs. These facilities are extremely beneficial in reducing the quantity of hazardous waste being disposed of improperly in municipal landfills or discarded in other environmentally unsound manners.

PHHWCFs operating before September 1992 were granted "interim status" authority to continue operating until a standardized permit could be approved and issued to them. PHHWCFs beginning operation after September 1992 were granted variances or issued consent orders allowing their operation. Because of the large unexpected number of standardized permit applications submitted to the Department and insufficient staff resources available to review those applications, and further evaluation of the level of review needed prior to allowing such operations, the Department has taken further steps to streamline the permitting and

authorization process for PHHWCFs by establishing PBR regulations for PHHWCFs. Compliance with these regulations will ensure that human health and the environment are fully protected where the operations of these facilities are concerned.

The Department is proposing to amend California Code of Regulations,(CCR), Title 22, Division 4.5, Chapter 10, Article 2, section 66260.10, Chapter 20, Article 6, section 66270.60, and Chapter 45, section 67450.9. Sections 67450.25 and 67450.30 will be added to Chapter 45 to allow PHHWCFs to operate under PBR. The regulations introduced by this rulemaking will further expedite permitting procedures for PHHWCFs operators.

Alternatives to these PBR regulations for PHHWCFs include the requirement of: (1) a full facility permit, (2) a standardized permit, (3) issuance of variances on a case-by-case basis and (4) exemptions from permitting requirements. Requiring that operators of PHHWCFs obtain full permits or standardized permits has been determined to be an unnecessarily high degree of regulation for the local agencies operating these facilities and requires extensive review and work on each application by the Department. The issuance of variances on a case-by-case basis would not be feasible because it would, among other things, place a tremendous burden on the Department and would not meet the needs of the regulated community since the Department would not be able to respond to the applications in a timely fashion. An exemption from permitting requirements would reduce the regulatory impacts on public agencies but would not assure safe facility operation and proper hazardous waste management.

The Department has been mandated to develop a separate and distinct regulatory structure for the permitting of PHHWCFs pursuant to HSC section 25218.11 which was added to the HSC effective January 1, 1996 (Stats. 1995, Chapter 672). HSC section 25218.11 requires that the Department simplify the permitting of PHHWCFs and not impose regulations that are more burdensome than necessary to protect public health and safety and the environment. The Department adopted emergency regulations on August 30, 1995 to provide a simplified permitting process that would still protect the public health and safety. The Department has determined that no alternative considered would be more effective in carrying out the purpose of this rulemaking or be as effective and less burdensome to affected public agencies than the proposed regulations.

No adverse economic impact to the regulated community is expected to result from implementing these proposed regulations since PHHWCFs operated by public agencies are exempt from generator, facility, and disposal fees [HSC section 25174.7(a)(2)].

Several additions have been made to the reference and authority citations given at the end of some regulation sections. These citations refer to statutes which authorize the Department to adopt regulations for PHHWCFs (authority citation) and statutes

which are being implemented or clarified by a regulation (reference citation).

The Department has determined that the amendment and repeal of these regulations creates no new local mandates.

The following is a discussion of each individual proposed or amended section.

CHAPTER 10, ARTICLE 2. DEFINITIONS

Section 66260.10 Department

Section 66260.10 is amended to indicate that the term "Department", when used in Division 4.5 of Title 22 of the California Code of Regulations, means the Department of Toxic Substances Control rather than the State Department of Health Services. The Department of Toxic Substances Control evolved from a program within the State Department of Health Services to become its own Department in 1991, but this was never reflected in Title 22 definitions. This amendment is necessary to clarify that the Department of Toxic Substances Control is the "Department" referred to in the hazardous waste management regulations.

Section 66260.10 Permanent Household Hazardous Waste Collection Facility

This rulemaking amends the definition of "permanent household hazardous waste collection facility" in section 66260.10 to reference newly added section 67450.25. Section 67450.25 makes specific reference to PHHWCFs operating under a PBR. "Contractor" was also added in the reference to "facility operated by a public agency to be consistent with HSC section 25218.1(f) which defines a household hazardous waste collection facility as one operated by a public agency or its contractor.

CHAPTER 20, ARTICLE 6. PERMITS BY RULE

Section 66270.60(c)(2) is amended to indicate that operators of PHHWCFs granted interim status or other authorization may continue to operate if they notify the Department, in writing, that they desire to cancel their grant or interim status or other authorization and operate under a PBR. These facilities are not required to submit new notifications if there are no changes to the information previously submitted in the standardized permit notification.

Section 66270.60(c)(3) is added to indicate that PHHWCFs granted variances or issued consent orders in lieu of a permit or grant of interim status, must submit a written request for cancellation of the order or variance and submit the notification required by section 66270.60(d)(6)(A) fortyfive days prior to the expiration date of the variance or order if the owner or operator of the

PHHWCF intends to operate the facility under a PBR after the expiration date of the variance or order.

Section 66270.60(d)(5) is amended to delete the requirement that the Department send written acknowledgment and notice of authorization to agencies operating Temporary Household Hazardous Waste Collection Facilities (THHWCFs). Operators of THHWCFS, however, are still required to submit the notification specified in this section. Because the notification must be sent by certified mail with return receipt requested, the public agency will continue to have proof that notification was received by the Department. Notifications will still be reviewed for completeness; however, a local agency will only be contacted by the Department if a notification is incomplete. These modifications streamline the permitting process and allow Department staff resources to be used more productively.

Section 66270.60(d)(5)(A) is amended to identify the correct Branch within the Department that the notification forms are to be submitted to. The proper notification form date is also reflected in this amendment.

Section 66270.60(d)(5)(B) has been deleted to reflect that the Department will no longer send written acknowledgment or official written authorization to THHWCF operators.

Section 66270.60(d)(5)(C) is redesignated 66270.60(d)(5)(B) to accommodate the deletion of existing section 66270.60(d)(5)(B). There are no substantive changes to the requirements of this section.

Section 66270.60(d)(6) informs operators of PHHWCFs that their facilities may operate under a PBR provided the operator complies with specific requirements in subsections (d)(6)(A) and (d)(6)(C) [i.e., with notification and operating requirements] and receives authorization from the Department pursuant to subsection (d)(6)(B). This subdivision also allows a PHHWCF to be operated by a contractor having a written agreement with the public agency. This was added to clarify that the actual day to day operation may be handled by a contractor if there is a written agreement with the public agency.

Section 66270.60(d)(6)(A) requires the PHHWCF operator to submit a PHHWCF PBR Notification (DTSC Form 1094B), in person or by certified mail with return receipt requested, to the Department of Toxic Substances Control, State Regulatory Branch. The notification for a new facility must be submitted a minimum of 45 days in advance of the date the PHHWCF commences operation. This advance notice is intended to allow the Department sufficient time to review the notification for completeness and determine whether the operator meets all the requirements necessary to operate under a PBR or whether any cause exists for denial of authorization. Each notification must be signed according to the requirements of section 66270.11, "Signatories to Permit

Applications and Reports". This requirement assures that a responsible official, will be held accountable for the accuracy and completeness of the information contained in the notification.

Section 66270.60(d)(6)(A)1. requires the operator name, mailing address and telephone number be included as part of the notification. This is necessary to enable the Department to contact the operator for more information or to coordinate any surveillance and enforcement operations, and to clearly establish the identity of the legal operator of the PHHWCF.

Section 66270.60(d)(6)(A)2. requires the facility name, address, legal description of the facility location, and identification number be included as part of the notification. This information is necessary for tracking purposes and for surveillance and enforcement personnel to locate the facility for inspection purposes.

Section 66270.60(d)(6)(A)3. requires the contractor's name, address, telephone number and contact person be included in the notification if the PHHWCF is operated by a contractor. This information is necessary for tracking purposes.

Section 66270.60(d)(6)(A)4. requires that a listing of all local permits required from local agencies for the operation of the facility be included with the notification (e.g., activity permits, land use permits, business permits). This assures that local authorities have been notified of the operation and allows the Department's regional offices to coordinate surveillance and enforcement activities with those local authorities.

Section 66270.60(d)(6)(A)5. requires a copy of an agreement between the property owner and facility operator allowing operation of the PHHWCF be submitted with the notification. This assures that the property owner is informed and agrees to household hazardous waste handling and storage on the property.

Section 66270.60(d)(6)(A)6. was included in the emergency regulations and required the facility operator to identify whether or not the facility was located on Indian lands. This requirement was deleted in the final version of the regulations because the Department decided this information could be obtained by other means. The remaining parts of this subsection have been renumbered to reflect this omission.

Section 66270.60(d)(6)(A)6. [initially designated as section 66270.60(d)(6)(A)7.] requires that the notification indicate whether or not the facility will accept wastes from CESQGs. This information is necessary for tracking purposes and to inform regional enforcement staff and local authorities of the status of the facility.

Section 66270.60(d)(6)(A)7. [initially proposed as section

66270.60(d)(6)(A)8.] requires the PHHWCF operator to identify the types of wastes, if any, that will be consolidated at the facility. This information is necessary to inform compliance personnel of facility activities so they may focus attention on specific aspects of the facility's operation.

Section 66270.60(d)(6)(A)8. [initially proposed as section 66270.60(d)(6)(A)9.] requires that the notification include an estimate of the total quantity of waste expected to be collected at the facility in an average month. This is necessary to assure that the facility operator has planned and provided for sufficient storage capacity, and to facilitate closure cost estimating.

Section 66270.60(d)(6)(A)9. [initially proposed as section 66270.60(d)(6)(A)10.] requires that the notification state the designed capacity of the storage units at the facility. This information is necessary to assure that a facility has sufficient storage capacity to handle the quantities of waste listed in the notification.

Section 66270.60(d)(6)(A)10. [initially proposed as section 66270.60(d)(6)(A)11.] requires that an operating schedule be included as part of the notification. This information allows the Department and other interested authorities to clearly identify the periods of operation, which in turn will allow the Department and other interested agencies to better monitor the PHHWCF.

Section 66270.60(d)(6)(A)11. [initially proposed as section 66270.60(d)(6)(A)12.] requires a written description of the facility and its operation, including the length of time waste will be stored at the facility. This information is necessary for inspection purposes.

Section 66270.60(d)(6)(A)12. [initially proposed as section 66270.60(d)(6)(A)13] requires the submittal of a plot plan with the notification. This plan show the general perimeters of the facility, the traffic patterns, waste management units and information specified in sections 66270.14(b)(18)(A), (F), (G), (H), (J), and (L) which includes the map scale and date, the orientation of the map, the legal boundaries of the facility, fences and gates, buildings, roads, loading and unloading areas, and the location of the operational units within the facility where hazardous waste will be stored or transferred. This requirement is necessary to assure that the Department is provided with pertinent information showing that the facility is able to operate safely. This information will also provide facility inspectors with data needed to thoroughly inspect the facility and ensure that the facility is operating in compliance with applicable requirements.

Section 66270.60(d)(6)(A)13. [initially proposed as section 66270.60(d)(6)(A)14.] would have required submittal of a

topographic map showing the location of the facility. This requirement was deleted in response to the comment that the requirement was excessive. The Department concluded that eliminating this requirement would reduce the regulatory burden placed on affected facilities without compromising the level of public health and environmental protection considered essential.

Section 66270.60(d)(6)(B) explains the steps which the Department will take upon receipt of a notification. This explanation is necessary so that affected persons may fully understand and anticipate the steps that will be taken by the Department upon receipt of a notification. This section further explains that the Department will give written acknowledgment of the receipt of the PHHWCF notification within thirty days. In conjunction with the acknowledgement, the Department will also: (1) authorize the operation of the PHHWCF subject to compliance with the requirements and conditions of section 67450.25; or (2) deny authorization to operate; or (3) or notify the operator that the notification is incomplete or inaccurate and, if so, will specify what additional information or correction is needed. The Department will reject any notification that fails to provide the information or correction requested within ten days of receipt of the acknowledgment. This assures the authorization will be granted within a specific timeframe (where the prerequisites are met), and allows the Department time to review the notification to ensure the operator meets all the requirements necessary to operate under a PBR. The Department is proposing this action to avoid the creation of a backlog of incomplete or otherwise deficient notifications and to inform operators of what action to expect from the Department.

Section 66270.60(d)(6)(C) outlines the requirements and procedure for filing amended notifications. Amended notifications are needed so that the Department and other agencies will remain informed of significant changes in the operation of a facility. The regulation also assures that the Department will have an opportunity to review and approve of any changes in advance of their implementation. This requirement is necessary for public health and environmental protection.

Section 66270.60(d)(6)(D) explains the steps the Department will follow upon receipt of an amended notification.

Section 66270.60(d)(6)(E) [initially proposed as section 66270.60(d)(6)(C)] requires each PHHWCF operator to comply with the operating requirements for PHHWCFs specified in section 67450.25 between the time the PHHWCF commences operation and the time the requirements of closure specified in section 66265.111 are met. The purpose of this subdivision is to clarify the required compliance time for the operating requirements for PHHWCFs.

Chapter 45. The chapter heading "Transportable Treatment Units and Fixed Treatment Units" is amended to read "Requirements for

Units and Facilities Deemed to have a Permit by Rule" to more accurately reflect the content of the chapter following the addition of requirements for THHWCFs and PHHWCFs.

Section 67450.4(c) is amended to correct a typographical error in the designation of subsection (c) [the lower case letter replaces the upper case letter]. The change is not substantive.

Section 67450.9(c) is amended to state that PBR authorization for THHWCFs and PHHWCFs is contingent upon the accuracy of information contained in the submitted notifications. This amendment is necessary to assure that operators of THHWCFs and PHHWCFs understand that their authorization is contingent upon the accuracy of the information contained in the notification, and that any misrepresentation of the information submitted in the notification will render authorization or reauthorization to operate null and void.

Section 67450.25 Requirements Applicable to Permanent Household Hazardous Waste Collection Facilities Deemed to Have a Permit by Rule. The title of this section explains the contents of the section.

Section 67450.25(a) states that the operator or contractor operating a PHHWCF pursuant to a PBR must follow the requirements set forth in the subsequent parts of this regulation.

Section 67450.25(a)(1) incorporates the requirements from existing sections 66262.10 through 66262.57, pertaining to generators of hazardous waste, including the use of a manifest for transporting hazardous waste as well as recordkeeping and reporting requirements. This requirement is consistent with the Department's position that a PHHWCF becomes a generator (of household hazardous wastes received) by operating in the capacity of a person who first causes household waste to become subject to regulation [see the definition of "generator" in section 66260.10]. Subsection 67450.25(a)(1) incorporates by reference existing section 66264.175 which requires a certified containment system for transfer and storage areas. [Note: Chapter 14, (Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities) storage containment standards are referenced in these regulations because there are no corresponding storage containment standards in Chapter 15 (Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities)]. This subsection also incorporates by reference existing section 66265.148, which requires the operator to notify the Department by certified mail of the commencement of voluntary or involuntary proceedings under Bankruptcy within 10 days after commencement of the proceeding. These requirements are necessary to assure proper waste containment to protect the public and the environment and inform the Department if the facility is not financially solvent.

Section 67450.25(a)(1)(A) specifies that the engineering certification required by subsection 66264.175(c) [tanks] be provided by the manufacturer, an independent professional registered engineer, or a professional engineer who may be employed by the local government entity operating the PHHWCF and who is employed by a different division or agency than the operator. This section assures that the containment systems will be adequate to protect the public health and safety and prevent potential release of hazardous waste to the environment. This section also provides that the government entity does not have to hire an independent engineer to certify the containment systems. This will help to prevent a financial burden on the local entity.

Section 67450.25(a)(2) incorporates requirements from specific articles of existing Chapter 15 as follows:

Section 67450.25(a)(2)(A) incorporates existing requirements in Article 2 of Chapter 15 concerning general facility standards. The following are the provisions that are incorporated by this reference: *Section 66265.11* requires that the facility obtain an identification number from the Department. *Section 66265.12(a)* is not applicable to PHHWCFs because PHHWCFs will not receive any waste from a foreign source. *Section 66265.12(c)* requires the facility to notify the new owner or operator of the requirements of Chapter 15 and Chapter 20, if the facility transfers ownership. *Section 66265.14(a)* requires the operator to prevent unauthorized entry of persons or livestock into the active portion of the facility. *Section 66265.14(b)* requires a 24-hour surveillance system or barrier which surrounds the active portion of the facility. *Section 66265.14(c)* requires that a sign with the legend "Danger Hazardous Waste Area - Unauthorized Personnel Keep Out" be posted at each entrance to the active portion of the facility and other locations, and that the sign(s) be legible from a distance of 25 feet. The sign(s) must be written in English, Spanish and in any other language predominant in the area surrounding the facility. *Section 66265.15(a)* requires the operator to inspect the facility for malfunctions and deterioration, operator errors, and discharges which may lead to a release of hazardous waste which may threaten human health or the environment. *Section 66265.15(b)* requires the operator to develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment. The schedule must be kept at the facility and must identify types of problems anticipated during the inspection. The inspection schedule must include, if applicable, the items and frequencies of inspections called for in section 66265.174 [container storage or transfer areas at least weekly]; 66265.193 [above ground piping, welded flanges, joints and connections, sealless or magnetic coupling pumps and sealless valves, pressurized aboveground piping systems with automatic shut-off devices visually inspected for leaks on a daily basis]; 66265.195 [spill control equipment, tank system, data gathered from monitoring equipment and leak-detection equipment, secondary containment structures, uncovered tanks,

inspected at least once each operating day, cathodic protection systems confirmed within six months after initial installation and annually thereafter, and all sources of impressed current inspected bimonthly]; 66265.1052 [pumps in light liquid service monitored monthly and visually inspected each calendar week]; 66265.1053 [compressor barrier fluid system sensor inspected daily]; and 66265.1058 [pumps and valves in heavy liquid service repairs made as soon as possible, but no later that 24 hours after a leak is detected]. *Section 66265.16* requires facility personnel to successfully complete classroom instruction or on-the-job training in hazardous waste management within six months after hiring. Instruction must teach the employee hazardous waste management procedures relevant to the positions in which they are employed and ensure that the personnel are able to respond effectively to emergencies. *Section 66265.17* requires the operator to take precautions to prevent ignition or reaction of ignitable or reactive waste. *Section 66265.18* requires that any facility located in a 100-year floodplain or within the maximum high tide be designed to prevent washout of any hazardous waste by a 100-year flood or high tide. *Section 66265.25* requires facility cover systems and drainage control systems be designed to function without failure when subjected to capacity, for both hydrostatic and hydrodynamic loads resulting from a 24-hour maximum precipitation storm. Compliance with these existing regulations is necessary to assure that PHHWCFs operating pursuant to a PBR are operated in a manner that adequately protects human health and the environment. The facility operator is not required to inform the off-site generator in writing that the operator has appropriate interim status for accepting the waste as required by *section 66265.12(b)*. The facility is also not required to obtain a detailed chemical and physical analysis of a waste prior to accepting it at the facility as required by *section 66265.13(a)*. Waste analysis will only be required for unidentified wastes and a field analysis may be used to identify the hazardous characteristics of the waste. This will assure that the hazards of unidentified waste are quickly identified and wastes may be separated by hazard classes to ensure only compatible wastes are packaged and/or stored together.

Section 67450.25(a)(2)(B) incorporates the requirements from existing Chapter 15, Article 3 (Preparedness and Prevention). The sections that are incorporated by reference are the following: *Section 66265.30* states that the regulations in Article 3 apply to operators of all hazardous waste facilities. *Section 66265.31* requires that the design, construction and operation of facilities minimize the possibility of fire, explosion or any unplanned sudden or non-sudden release of hazardous wastes or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment. *Section 66265.32* requires the facility to have an internal communication or alarm system, portable fire extinguishers, spill control equipment decontamination equipment, and water at the facility. *Section 66265.33* specifies that all required equipment be tested and maintained to assure proper

operation in the event of an emergency. *Section 66265.34* specifies that persons handling hazardous wastes must have access to a communication device or an alarm system. *Section 66265.35* requires that aisle space be adequate and remain unobstructed. *Section 66265.37* requires the PHHWCF operator to make arrangements to familiarize local police and fire departments, emergency response teams, and the local Office of Emergency Services with the layout and operation of the facility. Compliance with these existing regulations is necessary to ensure adequate response in the event of an emergency.

Section 67450.25(a)(2)(C) incorporates the requirements from existing Chapter 15, Article 4 (Contingency Plan and Emergency Procedures). The sections that are incorporated by this new subdivision are as follows: *Section 66265.50* states that the regulations in Article 4 apply to operators of all hazardous waste facilities. *Section 66265.51* requires operators to design and follow a plan to minimize hazards to human health or the environment in the event of fire, explosion, or release of hazardous waste or hazardous waste constituents to the environment. *Section 66265.52* requires the contingency plan to describe the actions facility personnel will take in response to any sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility. The plan must include a description of arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams. The plan must include a list of names of all persons qualified to act as an emergency coordinator and a list of all emergency equipment and where this equipment is required and located. The plan must also include an evacuation plan for personnel and the current telephone number of the State Office of Emergency Services. This regulation is required so that any emergency response will be swift and appropriate to prevent personal injury or loss of life. *Section 66265.53(a)* requires that a copy of the contingency plan and all revisions be maintained at the facility. Compliance with these requirements is necessary to ensure that the PHHWCF operator is prepared to take the necessary steps to protect human health and the environment in the event of an emergency. *Section 66265.53(b)* requires submittal of the contingency plan to local police, fire departments, hospitals and state and local emergency response teams. The Department is unable to determine if all the local entities specified in section 66265.53(b) require a copy of the contingency plan, and since the PHHWCF operator is making prior arrangements with all the local entities, the Department is leaving this requirement up to the individual local entities that the operator contacts. Thus, compliance with section 66265.53(b) is not required by these regulations. *Section 66265.54* requires that the contingency plan be amended when the facility has changes in such things as its design, operation, etc or there are changes in the emergency coordinators or equipment, or the plan failed in an emergency. This requirement ensures that a workable and up to date contingency plan is always available on site in

case of an emergency. *Section 66265.55* requires that the facility have an emergency coordinator available to respond to an emergency at all times. This requirement ensures that the PHHWCF operator is adequately prepared to take the appropriate steps to protect human health and the environment in the event of an emergency.

Section 67450.25(a)(2)(D) incorporates the requirements from existing Chapter 15, Article 5 (Manifest System, Recordkeeping and Reporting). The specific sections incorporated by this provision are as follows: *Section 66265.70* states that regulations in Article 5 apply to operators of both on-site and off-site facilities. *Section 66265.71(a)* requires the operator to sign and date each manifest received and note any significant discrepancies. This section also requires the operator to immediately give the transporter a signed copy, send a signed copy, within 30 days after delivery, to the generator and submit a signed copy to the Department within 30 days. The operator is also required to retain a copy of each manifest for at least 3 years. *Section 66265.71(b)* is not applicable to PHHWCFs as it concerns manifests for any bulk shipments from a rail or water transporter. These requirements are necessary, if any manifested waste is received, for tracking the hazardous waste and verifying that it is being properly managed and disposed of.

Section 67450.25(a)(2)(E) incorporates requirements from existing Chapter 15, Article 7 (Closure and Post-Closure). The sections incorporated by this provision are as follows: *Section 66265.110* states that sections 66265.111 through 66265.115 pertain to operators of all hazardous waste management facilities. Thus, PHHWCFs operators are required to comply with those sections. The remaining sections of this article concern post-closure for disposal facilities. Therefore, sections 66265.116 through 66265.120 do not apply to PHHWCFs as all wastes and contamination will be removed from those sites at closure. *Section 66265.111* requires the facility operator to minimize or eliminate any post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated rainfall or runoff, or waste decomposition products to the ground or surface waters or the atmosphere. *Section 66265.112* requires a written closure plan identifying the steps to be taken to perform final closure. This must include an estimate of the maximum inventory of hazardous wastes and a detailed description of methods of removing and transporting waste off-site, and a detailed description of steps needed to remove or decontaminate all hazardous waste residues and contaminated containment systems equipment, structures, and soils. This section also requires the closure plan to estimate the expected year of final closure and amend the closure plan whenever there are changes in the facility design that affect the closure plan or there is a change in the expected year of closure. This section requires submittal of the closure plan to the Department at least 180 days prior to the beginning date the operator expects to begin final closure. *Section 66265.113(a)* requires the removal of all hazardous waste in accordance with

the approved closure plan within 90 days after approval of the closure plan or 90 days after receiving the final volume of hazardous wastes at the facility, whichever is later. Section *66265.113(b)* requires the operator to complete the closure activities within 180 days unless the Department has approved an extension of the closure period. *Section 66265.114* requires that all contaminated equipment, structures and soil be properly disposed of, or decontaminated by removing all hazardous waste residues or hazardous constituents during closure. *Section 66265.115* requires the operator to certify that the hazardous waste facility has been closed in accordance with the specifications in the approved closure plan within 60 days of completion of the closure of the facility. These requirements are necessary to ensure the PHHWCF is closed in a manner that minimizes any present or future hazard to human health or the environment.

Section 67450.25(a)(2)(F) incorporates the requirements from existing Chapter 15, Article 9 (Use and Management of Containers). The sections incorporated by this provision are as follows: *Section 66265.170* requires operators of all hazardous waste facilities that transfer or store containers to comply with the requirements of this article. *Section 66265.171* requires the operator to store waste in containers that are in good condition and transfer hazardous waste that is contained in any leaking container or in a container not in good condition to a container in good condition, or otherwise manage the waste appropriately. Compliance with this regulation ensures that waste will be contained in containers that will not leak to the environment. *Section 66265.172* requires that waste be transferred or stored in containers that are compatible with the waste and will not react with the waste. This ensures that the integrity of the container will not be impaired. *Section 66265.173* requires that a container holding hazardous waste always be closed, except when adding or removing waste. This section also requires the proper handling of a container when opening, transferring or storing to prevent rupture of the container or leakage of the wastes. Additionally, this section requires the operator to comply with U.S. Department of Transportation regulations for any containers used for transporting hazardous waste. Compliance with these existing regulations is necessary to assure the safe handling, storage and transport of containers holding hazardous waste. *Section 66265.174* requires the weekly inspection of containers. Compliance with this regulation ensures that any deteriorating or corroded container that may lead to waste leaking from the container will be noticed and replaced with a good container before there is a harmful release or incident. *Section 66265.176* requires that any containers holding ignitable or reactive waste be located at least 50 feet from the facility's property line. This requirement provides a buffer zone to minimize the possibility of migration of contaminants to adjacent property should a spill occur. In response to a comment received on the proposed regulation, the Department has included an alternative which states that the minimum distance specified in section

66265.176 may be less than 15 meters (50 feet) from the facility's property line if the shorter distance minimizes the possibility of migration of contaminants to adjacent property should a release occur, and which meets Uniform Fire Code or local fire code requirements and has been approved, in writing, by the appropriate local agencies. This alternative standard provides flexibility to affected persons and should be particularly useful for facilities sited in areas where buffer zones are smaller than they may be in most locations (e.g., facilities in urban settings vs. rural locations). *Section 66265.177* requires that storage of containers in separate areas, dikes, berms or other devices be provided to separate containers holding a waste that is incompatible with another waste stored nearby in another container. Compliance with these requirements will help prevent explosion, fire or harmful chemical reactions and thus protect human health and the environment.

Section 67450.25(a)(2)(G) incorporates the requirements from existing Chapter 15, Article 10 (Tank Systems). The sections incorporated by this provision are as follows: *Section 66265.190* requires facility operators to comply with Article 10 if their facility has tank systems. *Section 66265.191* requires secondary containment for any existing tank systems. *Section 66265.192* requires specific design standards for new tank systems. *Section 66265.193* requires the secondary containment system meet specific requirements to prevent the migration of hazardous waste or hazardous constituents to the environment. *Section 66265.194* requires the use of spill and overfill prevention controls for tank systems. *Section 66265.195* requires daily inspections of the tank systems and overfill/spill control equipment, and documentation of the inspections in the operating record. *Section 66265.196* specifies response procedures to be followed in the event of a tank leak or spill. *Section 66265.197* requires removal of all hazardous wastes and waste residues upon closure. *Section 66265.198* imposes special requirements for reactive or ignitable wastes. *Section 66265.199* imposes special requirements for incompatible wastes. *Section 66265.200* requires waste analysis and trial tests to store a hazardous waste that is substantially different from waste previously stored in that tank system. These requirements are necessary to ensure that tanks containing hazardous waste are maintained and operated in a manner which adequately protects human health and the environment.

Section 67450.25(a)(3) requires an operation plan to include: (1) the notification submitted to the Department; (2) copies of the financial assurance documents required by 67450.30; (3) a copy of the acknowledgment from the Department as specified in 66270.60(d)(6)(B); (4) copies of documents required by subdivision (a)(2)(waste analysis plan, manifests, inspection plan, etc.); and (5) items specified by subparagraphs (A) and (B). [written plan in case the storage capacity is exceeded, name of the site supervisor, description of procedures to follow in the event of inclement weather, the procedures used when accepting

CESQG waste, documentation of precautions to prevent accidental ignition or reaction of ignitable or reactive waste, written approved protocol to consolidate (bulk) solvents, etc., if applicable, copies of any local permits, a copy of the written agreement between the property owner and the operator of the PHHWCF, and a copy of the agreement between the contractor and the operator, if applicable]. This information is necessary to assure that inspectors have access to the information needed to monitor the facility's compliance with requirements applicable to PHHWCFs.

Section 67450.25(a)(3)(A) requires a written plan be implemented whenever the PHHWCF meets or exceeds its maximum storage capacity. These requirements are necessary to assure the facility is adequately prepared to take appropriate steps in the event the facility collects an amount of hazardous waste that exceeds the facility's maximum storage available.

Section 67450.25(a)(3)(B) incorporates the requirements of existing sections 67450.4(b)(6), (b)(8), (b)(9), (b)(13), (b)(14) if applicable, (b)(16), (b)(17), and (b)(18)(Requirements Applicable to Temporary Household Hazardous waste Collection Facilities Deemed to Have a Permit by Rule). The information required by these sections must be included in the operation plan. *Section 67450.4(b)(6)* requires the name of the site supervisor. *Section 67450.4(b)(8)* requires the description of the procedures to follow to ensure the facility will be managed in an environmentally safe manner in the event of inclement weather. *Section 67450.4(b)(9)* specifies limitations on waste acceptance procedures if a facility plans to accept wastes from CESQGs. The PHHWCF must accept CESQG waste separately from household waste. This is necessary because the PHHWCF must keep records of CESQG wastes. This also allows the PHHWCF to make appointments for CESQG waste and reduces the waiting time for the CESQG to have the waste accepted. *Sections 67450.4(b)(9)(A) and (b)(9)(B)* explain options for accepting CESQG waste. The facility may direct the CESQG to an area separate from the household hazardous waste receiving area or may accept the CESQG waste at hours different from the hours when the household waste is accepted. For example, a PHHWCF could accept CESQG wastes exclusively on Fridays and household wastes exclusively on Saturdays. *Section 67450.4(b)(13)* requires the operator to maintain documents which demonstrate that the facility is operating in compliance with handling requirements for ignitable, reactive or incompatible wastes. This requirement is consistent with those for all permitted and interim status facilities. This requirement ensures that the wastes are stored in a manner that minimizes the possibility of fire, explosion or any sudden or non-sudden release of hazardous wastes that may pose a threat to human health or the environment. *Section 67450.4(b)(14)* requires that a copy of the written protocol approved by the local fire and air pollution prevention agencies be followed if solvents, oil-based paints or gasoline are to be consolidated at the facility. This subdivision is required to ensure appropriate

measures are taken to prevent potential releases of volatile fumes or chemicals which may pose a fire or explosion hazard. *Section 67450.4(b)(16)* requires copies of all local permits obtained for the operation of the facility be included as part of the operation plan. *Section 67450.4(b)(17)* requires a copy of the written agreement between the property owner and the operator be included in the operation plan. *Section 67450.4(b)(18)* requires that a copy of the written agreement between a facility operator and a contractor hired to manage the facility be included as part of the operation plan. This information is necessary for other agencies conducting inspections and who do not receive the PBR notification.

Section 67450.25(a)(3)(C) requires the operator or contractor to make the operation plan available upon request to specified authorities. This will provide inspectors with necessary information to ensure the facility is operating in compliance with the regulations. This section also requires that the operator to provide the Department with a copy of the operation plan either by certified mail or delivered in person when requested by the Department. This assures that the Department will have access to pertinent information should there be a question concerning the operator's compliance with the PHHWCF regulations.

Section 67450.25(a)(4) requires the operator to comply with existing sections 67450.4(d), (e), (g) (h)(3), and (i) except as modified in 67450.25(a)(4)(A), (B),(C), and (D). *Section 67450.4(d)* establishes the siting requirements and physical parameters for the collection facility. This section ensures the public agency proposing the PHHWCF will consider the proposed location's potential for specific negative impacts to the public and the environment and that the operator of the PHHWCF will be fully aware of the physical requirements necessary to operate the facility safely. *Section 67450.4(d)(1)* requires the PHHWCF to be located in an area that is clearly marked to control public access. This is necessary to help prevent unauthorized entry and protects the public from exposure to hazardous waste. *Section 67450.4(d)(2)* requires the PHHWCF to have a buffer zone approved by the appropriate local agencies. This section is necessary to ensure that, in the opinion of the appropriate local agency, the PHHWCF will be sited in a location far enough away from existing buildings or public areas to protect the public health and safety. *Section 67450.4(d)(3)* requires the facility to be located on a large enough area to accommodate the staff, equipment and anticipated number of vehicles at the PHHWCF. This ensures there will be enough space at the facility to conduct a collection in a safe manner to minimize potential harm to the facility personnel, the public and the environment. Section 67450.4(d)(5) requires the facility to have a physical barrier to clearly delineate the waste handling and storage areas. This requirement is necessary to help prevent untrained and unauthorized persons from entering the waste handling areas, and minimizes exposure risks to the public. The intent of this

section is that the perimeters of the handling and storage areas be clearly marked so that persons do not enter those areas accidentally. *Section 67450.4(d)(6)* requires the facility to have a storage area for ignitable and/or reactive waste that has the written approval of the appropriate local agencies. This regulation is required to ensure safety to the public and facility workers. *Section 67450.4(e)* requires that consolidation be performed in a secured area away from the waste receiving area. Consolidation of solvents, oil-based paints or gasoline must not occur when wastes are being accepted. A written protocol approved by local fire and air pollution prevention agencies must be followed. All consolidated wastes must be shipped to an authorized facility and must be packaged and labeled properly. Personnel who sort, consolidate or package waste must be trained to perform their tasks in a safe manner. *Section 67450.4(g)* requires the operator to keep a separate record identifying the conditionally exempt small quantity generator, the waste type and amount and the fee paid to the facility for managing that waste. *Section 67450.4(h)(3)* requires the operator to maintain, for three years, records pertaining to conditionally exempt small quantity generators. *Section 67450.4(i)* requires the operator of a facility to submit a written report to the regional Department office whenever there is an incidence of non-compliance. This report must include the name, address and telephone number of the operator and location of the facility, the days and hours of operation, a description of the incident and procedures to be implemented to prevent a recurrence of the incident. This regulation is necessary to ensure a consistent and adequate degree of protection to public health, facility workers and the environment.

Section 67450.25(a)(4)(A) explains how section 67450.4(d)(4) is modified for PHHWCFs. Because the facility is located at a permanent site, the waste handling and storage areas must have a containment system that meets the requirements of section 66264.175(b)(1) instead of a paved area covered with plastic sheeting which is allowed for THHWCFs. The PHHWCF containment system must include a continuous base free of cracks or gaps and be impervious to contain leaks, spills, and accumulated precipitation. This is necessary as the PHHWCF may be used many times during the year and the integrity of the surface must remain intact to ensure no releases to the environment.

Section 67450.25(a)(4)(B) indicates that a PHHWCF operator does not need to comply with existing section 67450.4(d)(9)(E) which requires a separate storage area for wastes which are ready to be transported offsite. This provision is not necessary for PHHWCFs as the facility may store waste onsite for up to a year to allow for cost effective disposal. The waste is transported offsite when enough waste is accumulated to make a full shipment. Therefore, a separate storage area for waste ready to be transported offsite is not necessary.

Section 67450.25(a)(4)(C) explains the modification of section

67450.4(d)(10)(D) for PHHWCF operators. This section requires the PHHWCF operator ensure that no unauthorized persons enter the waste handling and storage areas. Existing section 67450.4 (d)(10)(D) requires the facility operator to ensure that participants delivering waste remain in their vehicles while in the waste acceptance area. Compliance with this regulation will prevent entry of untrained and unauthorized persons into waste handling areas, prevent accidents and reduce exposure hazards to the public.

Section 67450.25(a)(4)(D) modifies existing section 67450.4(e)(2) for PHHWCF operators to also include the consolidation of waste photofinishing solutions and miscellaneous compatible solvent-containing wastes along with the consolidation and filtering of water-based paints, oil-based wastes identified in section 67450.4(e)(2)(paints, antifreeze, used oil, roofing tar, compatible solvents and gasoline). The consolidation of these additional wastes is encouraged because these wastes are all readily recyclable or reusable and consolidation provides a cost-effective means of transporting the wastes offsite.

Section 67450.25(a)(5) requires compliance with existing HSC section 25200.14 except as provided in the subsequent provisions. HSC section 25200.14 requires the operator of a facility to complete and file a phase I environmental assessment with the Department within one year from the date of the adoption of the phase I environmental checklist. The final checklist was adopted June 6, 1996. Accordingly, the completion date is specified in the regulation is June 6, 1997.

Section 67450.25(a)(5)(A) requires that a facility operator file a phase I environmental assessment with the Department within one year of commencing operation under a PBR or by June 6, 1997, whichever date is later. This subdivision does not require the operator to conduct a new phase I environmental assessment if the PHHWCF operator, previously operating under a grant of authorization from the Department, has already completed a phase I environmental assessment. This prevents a duplication of effort for existing PHHWCFs.

Section 67450.25(a)(5)(A)1. clarifies what area must be considered in the environmental assessment. The assessment should only include areas directly affected by the operation of the PHHWCF. This subsection also clarifies that any corrective action taken pursuant to HSC section 25200.14(f) is to be limited to releases from regulated units at the PHHWCF.

Section 67450.25(a)(5)(A)2. states that the environmental assessment may be certified by the operator or its designee, a professional engineer, a registered geologist, or registered environmental assessor. This regulation allows the local government entity to use existing qualified professional staff within the local government for certification of the environmental assessment.

Section 67450.25(a)(5)(A)3. requires submittal of a copy of the environmental assessment and certification to the Department, and requires that a copy also be included in the operation plan. This requirement assures the assessment will be available for review by the Department's inspectors or by other agency personnel.

Section 67450.25(a)(6) states that wastes may be stored at a PHHWCF for up to one year from the date of collection. This provision was previously included in section 66270.60(d)(6)(A)11 [initially proposed as 66270.60(d)(6)(A)12.].

Section 67450.30 addresses financial responsibility requirements for PHHWCFs. Financial assurance for closure of facilities operating under a PBR is required by HSC section 25245.

Section 67450.30(a) states that section 67450.30 applies to all PHHWCFs authorized under a PBR.

Section 67450.30(b) requires the PHHWCF operator to prepare and submit to the Department a written cost estimate for closure. The estimate must equal the costs of final closure when operating conditions cause projected closure costs to be most expensive. These requirements assure that adequate funds will be available for closure of the facility in the event the facility operator closes the facility when operating conditions maximize closure costs.

Section 67450.30(b)(1) requires the operator to adjust the closure cost estimate within 60 days prior to the anniversary date of the original establishment of the financial mechanism. This subdivision also clarifies how to determine the inflation factor. This ensures there will be monies available to close the facility at a point in time when the extent and manner of operation would make closure most expensive.

Section 67450.30(b)(1)(A) describes how to determine the first adjustment to the closure cost estimate. This assures that the first annual adjustment to the closure cost will be properly computed to keep pace with inflation.

Section 67450.30(b)(1)(B) explains how to adjust the closure cost estimate. This is necessary to assure that adjustments to the closure cost estimate will keep pace with inflation.

Section 67450.30(b)(2) requires the operator to revise the closure cost estimate within 30 days of when a change in the closure plan increases the projected cost of closure. This is necessary to ensure the operator is prepared to cover any new closure costs.

Section 67450.30(b)(3) requires the operator to maintain a current cost estimate and closure plan at the PHHWCF during the operating life of the facility. This requirement is necessary to

ensure that the closure plan and the closure cost estimate are available for review by the Department's inspectors and other agency personnel.

Section 67450.30(b)(4) specifies that revised closure costs prepared pursuant to section 67450.30(b)(1) and (b)(2) be submitted to the Department at the same address to which PBR notifications are to be submitted.

Section 67450.30(c) identifies the mechanisms that may be used to establish financial assurance for closure. The original mechanism(s) must be submitted with the certification required in section 67450.30(c). This requirement is consistent with existing regulations in Chapter 15, Article 8 which cover financial requirements for operators of hazardous waste facilities.

Section 67450.30(c)(1) states that a closure trust fund may be used to demonstrate financial assurance for closure for a PHHWCF and cites existing section 66265.143(a) which details the requirements for this mechanism.

Section 67450.30(c)(2) states that a surety bond guaranteeing payment into a closure trust fund may be used to demonstrate financial assurance for closure for a PHHWCF and cites existing section 66265.143(b) which details the requirements for this mechanism.

Section 67450.30(c)(3) states that a closure letter of credit may be used to demonstrate financial assurance for closure for a PHHWCF and cites existing section 66265.143(c) which details the requirements for this mechanism.

Section 67450.30(c)(4) states that closure insurance may be used to demonstrate financial assurance for closure for a PHHWCF and cites existing section 66265.143(d) which details the requirements for this mechanism.

Section 67450.30(c)(5) states that a financial test and corporate guarantee may be used to demonstrate financial assurance for closure for a PHHWCF and cites existing section 66265.143(e) which details the requirements for this mechanism.

Section 67450.30(c)(6) states that an alternate mechanism, as described in existing section 66265.143(f) may be used to demonstrate financial assurance for closure for a PHHWCF.

Section 67450.30(c)(7) states that multiple financial mechanisms for closure costs may be used to demonstrate financial assurance for closure for a PHHWCF and cites existing section 66165.143(g) which details the requirements for this option.

Section 67450.30(c)(8) states that public agencies may use self-insurance to demonstrate financial assurance for closure for a

PHHWCF. Public agencies have self-insurance programs already in place. Public agencies have previously been able to use self-insurance to demonstrate financial assurance for closure of household hazardous waste collection facilities, but each had to be analyzed on a case-by-case basis as an alternative mechanism. This regulation allows self-insurance as a defined option and will provide public agencies with a quick and easily demonstrated financial responsibility mechanism.

Section 67450.30(c)(8)(A) requires the submittal of a certificate of self-insurance if the public agency intends to use self-insurance for closure. The certificate is Department Form 1220 and must have original signatures. This regulation is necessary to enable the Department to determine whether the financial assurance provided is adequate and also verify the availability of financial resources.

Section 67450.30(c)(8)(B) requires the public agency to guarantee that funds will be available and the agency will pay for the PHHWCF closure. This regulation ensures that closure funds are available and the public agency will be responsible for funding proper closure.

Section 67450.30(d) requires the operator to submit a certification with the PHHWCF PBR notification. The certification is necessary to enable staff to verify closure assurance information.

Section 67450.30(d)(1) states what information is required in the certification. The certification must include a current closure cost estimate, the closure assurance mechanism(s), the name and location of the organization used to establish the closure assurance, and the effective date of the closure assurance. The certification is necessary to enable staff to verify closure assurance information. This certificate must be signed according to the requirements of section 66270.11. *Section 66270.11* defines who an authorized signatory is. The signature of an individual specified in section 66270.11 is necessary so that a responsible official will be held accountable for the accuracy of information included in the certification.

Section 67450.30(e) states that a PHHWCF operating fewer than thirty (30) calendar days per year whose current closure cost estimate is less than $10,0000 is not required to provide financial assurance for closure. Persons in this category are, however, required to maintain documentation at the facility stating the reason(s) why the facility is eligible for this exemption. A copy of that document must also be submitted to the Department ten (10) days in advance of the date upon which the facility operates under this exemption.

Note: Third-party liability assurance requirements were deleted from the final version of the regulations to conform the regulations with statutes effective January 1, 1996 (HSC section 25245.4(a)(2)), which exempt PBR facilities from regulations requiring financial assurance for third-party liability.

RESPONSES TO COMMENTS
RECEIVED FROM FEBRUARY 9, 1996 THROUGH APRIL 4, 1996
CONCERNING PROPOSED PERMIT BY RULE REGULATIONS FOR PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES (R-95-03)

COMMENT: Commentor number 1 said that section 66265.176, which requires that containers holding ignitable or reactive wastes be located at least 50 feet from the facility's property line, would be better worded "a buffer zone must be established that minimizes the possibility of migration of contaminants to adjacent property should a spill occur, meets Uniform Fire Code or local fire codes (whichever is more stringent), and has written approval of the appropriate local agencies." The commentor said the suggested wording would achieve the same objective.

RESPONSE: Section 66265.176 is not within the scope of this rulemaking; however, the Department acknowledges that there may be situations where a shorter distance is acceptable and will therefore amend section 67250.25(a)(2)(F) of the proposed regulations to indicate that affected persons have the option of complying with section 66265.176 or the alternative standard suggested by the commentor.

COMMENT: Commentor number 1 said that section 67450.25(a)(4)(A), which states that the containment system must meet the requirements of section 66264.175(b)(1), should be changed to allow facilities that operate fewer than 30 days per year or that accept less than a specified tonnage of waste per year to have a paved area covered with plastic sheeting similar to that allowed for temporary household hazardous waste collection facilities (THHWCF).

RESPONSE: The commentor is suggesting that PHHWCFs that operate infrequently or on a small scale should be able to utilize plastic sheeting rather than the more durable containment measures specified in section 66264.175(b)(1), but does not state why this should be the case. Whatever the reasons may be, a facility operating infrequently may operate as a THHWCF, rather than a PHHWCF, at the same location once a month for up to two consecutive days up to 12 times per calendar year and thus utilize plastic sheeting (i.e., the commentor has the option of operating as a THHWCF where a limited or infrequent period of operation is anticipated and where the requirements for THHWCFs are met). A facility has the option of operating as a THHWCF rather than a PHHWCF and submitting one notification for the entire year for that location 45 days prior to the first event. While the environmental and public health consequences of a release can depend on the volume of hazardous waste or material released, there is no reason for the Department to assume that a

smaller volume of material at a continuously operated PHHWCF is less likely to be released than a larger volume of waste at a larger continuously operated facility, or to essentially adopt the position that smaller releases do not present problems and therefore, that stringent containment measures are not needed where smaller volumes of waste are involved. No change to the regulation is proposed on the basis of this comment.

COMMENT: Commentor number 2 said the proposed regulations will enable public agencies interested in operating PHHWCFs to begin operating sooner, and to operate without the burdensome requirements imposed on persons operating under a full permit, standardized permit, or variance. The commentor commended the Department for its efforts to simplify the PHHWCF permitting process and incorporate comments from the commentor and other public agencies in drafting the proposed regulations.

RESPONSE: The Department acknowledges the comment.

COMMENT: Commentor number 3 said the requirement to comply with sections 66262.10 through 66262.57 (generator standards) includes section 66262.10(g) which states that a generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in chapters 14, 15, 16, 18, and 20 of this division. To the commentor, however, this appears to be contrary to section 67450.25 which lists the specific sections of these chapters with which PHHWCFs must comply. The commentor suggests revising the regulations to state that section 66262.10(g) does not apply to PHHWCFs.

RESPONSE: The Department sees no inconsistency between sections 67450.25(a)(1) and 66262.10(g). Section 66262.10(g) states that a generator who treats, stores, or disposes of hazardous waste onsite shall comply with the <u>applicable</u> standards set forth in chapters 14, 15, 16, 18, and 20. Section 66270.60(d)(6) [from chapter 20] indicates which standards are applicable to PHHWCFs permitted by rule. Pursuant to that section, the standards in section 67450.25, among others in chapter 45, are applicable to PHHWCFs permitted by rule. Section 67450.25 then enumerates regulatory requirements that are specifically applicable to owners and operators of PHHWCFs permitted by rule, including requirements from chapters 14 and 15. No change is proposed on the basis of this comment.

COMMENT: Commentor number 3 said the requirement to comply with section 66262.10 through 66262.57, includes the requirement to submit biennial reports to the Department. Commentor number 3 requested clarification that PHHWCFs are not required to submit this report. The commentor suggests amending the regulation to state that section 66262.41 does not apply to PHHWCFs.

RESPONSE: PHHWCFs have not been required to submit biennial reports in the past. The Department has amended section 67450.25(a)(1) to indicate that compliance with section 66262.41 is not required of PHHWCFs permitted by rule.

COMMENT: Commentor number 3 said section 67450.25(a)(2)(A) makes reference to existing section 66265.13 as one of the provisions PHHWCFs must comply with. That section requires an off-site facility to analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. The commentor suggests revising section 67450.25(a)(2)(A) to exclude section 66265.13(c).

RESPONSE: The Department is accommodating this remark by modifying section 67450.25 (a)(2)(A) to exclude compliance with section 66265.13. The Department does not believe the waste analysis plan requirement should be dismissed altogether, however, and in place of the requirements specified in section 66265.13 is therefore modifying section 67450.25(a)(2)(A) to indicate that a waste analysis plan must be prepared and maintained for the classification of unidentified wastes that may be received by a facility. This requirement is less burdensome than section 66265.13(c), and is necessary to assure that affected facilities have the means to properly classify unidentifiable wastes and assure their proper handling. The Department believes adherence to this standard and the other requirements specified in these regulations will assure that PHHWCFs are operated in manners protective of public health and safety and the environment.

COMMENT: Commentor number 3 observed that the section following section 67450.4(b)(18) is labeled as "67450.4(C)". The commentor wished to know whether this section should be designated as section 67450.4(b)(18)(A) or 67450.4(c)? If this section were to be designated as section 67450.4 (b)(18)(A), the commentor reasoned, a PHHWCF permitted by rule would have to maintain compliance with sections 66264.16 and 66264.17, Chapter 12, and Articles 3 and 4 of Chapter 14. The commentor requested the Department properly label section 67450.4(C) as 67450.4(c).

RESPONSE: The section in question should be designated as 67450.4(c). Although this section was not amended in the proposed regulations, the proposed regulations reference section 67450.4. Therefore, the Department will make a nonsubstantive change to correctly label the section to read 67450.4(c).

COMMENT: Commentor number 4 said the requirement in section 66270.60(d)(6)(A) to provide a topographic map showing the PHHWCF location and the area extending 2000 feet beyond the property boundaries of the facility seems excessive and contrary to the intent of HSC section 25218.11, especially when other PBR facilities treating or storing RCRA wastes are not held to the same requirement.

RESPONSE: This suggestion has merit because it further reduces the burden and paperwork imposed on PHHWCF operators and does not reduce the level of environmental or public health protection considered essential. Therefore, the Department accepts this recommendation and is modifying the proposed regulations accordingly.

COMMENT: Commentor number 4 said the compliance with 67450.4(d)(10)(C), requiring that the operator provide traffic control which is "routed in a one-way direction to minimize backing up or turning around is unnecessary and impractical at many PHHWCFs which may have limited space. Commentor 4 suggests revising the regulation to read "routed and controlled in such a way as to avoid damage to any component of the PHHWCF and/or injury to persons employed by or utilizing the PHHWCF".

RESPONSE: The Department believes the provision for routing traffic in one direction is needed for safety reasons. The risk of accident or injury at a HHWCF from traffic flow is not insignificant. No change is proposed on the basis of this comment. If an owner or operator feels his or her situation is exceptional and he or she can provide adequate reason for justifying an alternate traffic flow, the operator has the option of requesting a variance from the regulatory requirement. Variances may be granted on a case-by-case basis.

COMMENT: Commentors number 4 and number 5 said compliance with section 67450.4(e)(2)(A), which prohibits the consolidation of solvents, oil based paints, and gasoline during the hours when wastes are being accepted at the facility, may not be necessary or even practical at a PHHWCF because a PHHWCF typically admits fewer customers and processes less waste in the course of daily operations than do THHWCFs. The commentors suggested that the regulations allow the PHHWCF operator to consolidate solvents, oil based paints, and gasoline during hours when wastes are being accepted as long as these operations are conducted in the waste acceptance area. This would allow customers bringing in spent gasoline to wait while their approved container is drained into a waste gasoline storage tank, and then take their containers back home with them on the same day. The commentors suggested that section 67450.25(a)(4)(D) be amended to state that the operator of a PHHWCF may consolidate water-based paints, oil-based paints, compatible solvents, gasoline, antifreeze, used oil, roofing tar, or similar resins, photo finishing solutions, miscellaneous solvent-containing wastes, and other wastes as authorized by the Department.

RESPONSE: The Department has received a number of variance requests for this activity and has not found significant reduction in the level of environmental or public health protection considered essential in allowing this activity. Therefore, the Department will amend the regulations along the lines suggested. We are not including a requirement for specific authorization to accept the enumerated wastes however, because we

do not wish to create a new authorization program or element for this activity. We are proposing language sufficiently broad enough to cover most of the types of materials that would be received by these facilities and consolidated. If new needs arise, we will consider amending the regulation at that time, and in the interim, will deal with those needs using variances where appropriate.

COMMENT: Commentor number 5 said its experience with the previous (PHHWCF) permit process was that it was extremely cumbersome, and a deterrent to siting a PHHWCF. The commentor said that these proposed regulations have addressed many of their concerns and incorporated the concerns of other members of the Household Hazardous Waste Information Exchange. The commentor said the simplified process will ease the regulatory burden on all parties.

RESPONSE: The Department acknowledges the comment.

COMMENT: Commentor number 5 suggests section 66270.60(d)(6)(A)4. be revised to require listing of any relevant state agency permits. This would include air permits or other state agency permits.

RESPONSE: Other state agencies may indeed require permits for the operation of a PHHWCF. The Department agrees with the commentor and will amend the section to include a reference to state-issued permits.

COMMENT: Commentor number 5 suggested that section 66270.60 (d)(6)(A)11., the reference to one-year storage, would be more appropriately referenced in section 67450.25.

RESPONSE: The Department agrees that the regulation can be improved and clarified by specifying the storage time for the PHHWCF in section 67450.25. Therefore, the Department will add section 67450.25(a)(6) to specify a maximum storage time of one year for PHHWCF operators and remove this requirement from section 66270.60(d)(6)(A)11.

COMMENT: Commentor number 5 suggests revising 66270.60(d)(6)(A)(13) to read "This requirement may be satisfied by submitting a legible copy of a commercially available topographic sheet enlarged to a scale of 200 feet per inch. The appropriate information should be noted on this sheet." The commentor said commercial topographic maps are not usually current regarding the location of drinking water wells.

RESPONSE: See response to commentor number 4. The Department has concluded that the submittal of a topographical map is not essential to the safety of the public or the environment and has omitted this requirement.

COMMENT: Commentor number 5 suggests a new section, (67270.60

(d)(6)(D)), be included to read "The Department should receive written notification, within 30 days, of any revisions to information submitted pursuant to section 66270.60(d)(6)(A). The Department shall notify the operator if the information is incomplete or inaccurate within 30 days of receipt of the revised information."

RESPONSE: Although the application instructions for Form 1094 state how a revision should be handled, the Department sees a need for further clarification in the regulations. The Department is adding section 67270.60(d)(6)(C) to address this need. The 45-day period is consistent with the original notification time line and allows time for the operator to provide corrected or additional information to the Department if needed.

COMMENT: Commentor number 5 suggests that section 67450.25 (a)(1) be revised to read "Maintain compliance with sections 66262.10 through 66262.57, 66264.175, and 66265.148, unless otherwise authorized by the Department."

RESPONSE: The Department acknowledges that there may be occasions when deviations from the specified requirements are necessary and/or appropriate. The mechanism for obtaining authorization to depart from specified requirements is the variance procedure described in HSC 25143 and section 66260.210. The Department sees no reason why the creation of new mechanisms of authorization should be established for these purposes, or why the existing variance procedure, which has worked well in cases involving PHHWCFs, should not continue to be used where the sections listed by the commentor are concerned. No change is proposed on the basis of this comment.

COMMENT: Commentor number 5 said the reference in section 67450.30(c)(4) to section 66265.143(d), which specifies the use of the Department's Form 1158, should be changed to allow submittal of other forms containing the same information as the Department's Form 1158. The commentor said the form is not entirely consistent with the standardized accord certificate of liability form utilized by the insurance industry, and that it is extremely difficult to obtain non-accord based forms.

RESPONSE: The regulations pertaining to closure assurance make reference to regulations already in effect and applicable to all PBR facilities. The request of the commentor is beyond the scope of these proposed regulations. No change is proposed on the basis of this comment.

COMMENT: Commentor number 5 requests clarification of section 67450.30(e) concerning the reference to $10,000 per year closure cost estimate. The commentor asked whether $10,000 is the total estimated closure cost or the annual funding requirement.

RESPONSE: The reference in section 67450.30(e) to $10,000 is to

the total estimated closure cost.

COMMENT: Commentor number 5 requested clarification on what an existing facility will have to do to receive PBR authorization.

RESPONSE: HSC section 25200.16(c)(4) states that a facility operating under interim status must request in writing that the Department terminate the existing hazardous waste facility permit or grant of interim status. If the facility has previously submitted a complete notification form (DTSC 1094B) along with the required attachments and there are no changes in the operation of the facility, no other steps are necessary. A revised notification must be submitted to the Department 45 days prior to implementing any change at the facility (e.g., a change in ownership, additional storage units or tanks, hours of operation, etc.). A facility operating under a variance must submit a completed notification form (1094B) 45 days prior to the expiration date of the variance.

COMMENT: Commentor number 5 said he was the contractor of a facility and had prepared the certifications on the existing facility. The regulations specifically exclude certifications performed by the contractor. The commentor wishes to know if such facilities will need to have new certifications written?

RESPONSE: Since existing facilities were in compliance with the law at the time of their certification, a new certification would not be required under the proposed regulatory change.

COMMENT: Commentor number 5 wanted to know if the past Departmental policy on aisle space and closed containers is still in place with the new regulations.

RESPONSE: The Department's regulations pertaining to aisle space and closed containers are not changed by the proposed regulations.

COMMENT: Commentor number 6 said that household hazardous waste collection facilities should not be limited to those collection sites operated by public agencies, at least not in the context of used oil collection programs for Do-It-Yourself (DIY) used oil. The commentor further states that used oil collection centers should be operable by public or private entities under a permit by rule. The commentor states that the Department should apply the same permit by rule regulatory scheme evenly among all household hazardous waste collection facilities whether public or private.

RESPONSE: Presently, DIY used oil collection centers are operated by both public and private entities and are all subject to the same regulatory requirements. There are currently no permit requirements for facilities that collect used oil from DIY persons (HSC section 25218.8). There is no reason to amend the proposed regulations based on this comment.

COMMENT: Commentor number 7 suggested that reuse of materials should be allowed in the PHHWCF framework.

RESPONSE: The reuse of materials has been an important part of household hazardous waste programs since their inception. Reuse programs (e.g., exchange programs) are not prohibited by these regulations. No change is proposed on the basis of this comment.

COMMENT: Commentor number 7 said additional precautions are needed for screening and managing polychlorinated biphenyl compounds at the PHHWCF and the operator must have a demonstrated capability to properly manage these wastes.

RESPONSE: The proposed regulations require affected persons to properly manage all hazardous wastes received at the facility. The Department chose not to require extensive routine analyses, however, because doing so would greatly increase the costs of operating these facilities and could discourage persons from siting and operating these facilities, contrary to the public health and environmental policy objectives of the Hazardous Waste Control Law. The proposed regulations specify that facility operators and/or contractors may test as needed to identify unknown wastes [see section 67450.25(a)(2)(A)]. No change is proposed on the basis of this requirement.

COMMENT: Commentor number 7 said the reference to staff training in section 67450.4(e) should state that employees should have 40-hour "Hazwoper" training equivalent to OSHA requirements.

RESPONSE: Section 67450.4(e)(5) [incorporated by reference in section 67450.25(a)(4)] states that all personnel who sort, bulk or package waste must meet the personnel training requirements specified in Section 66264.16(a) and the requirements of the Occupational Safety and Health Administration (OSHA), which include 40-hour "Hazwoper" training. There are no changes to the proposed regulations based on this comment.

COMMENT: Commentor number 7 said section 67450.25(a)(5)(A)2. should be clarified to allow for an assessor independent of the operator versus owner of the PHHWCF. This will allow use of subsidiary company personnel who can still provide independent and objective assessments.

RESPONSE: The Department believes there could be a greater risk of a conflict of interest between the owner and the assessor then there could be between the operator and the assessor. No changes are proposed on the basis of this comment.

COMMENT: Commentor number 7 said the requirement for closure costs and sudden accidental insurance are needed and should be retained.

RESPONSE: HSC section 25245.4(a)(2), which became effective January 1, 1996, exempts PBR facilities from third party

liability requirements. Changes to the law require a legislative mandate and are beyond the scope of these regulations. No change is proposed on the basis of this comment.

COMMENT: Commentor number 7 said section 67450.30(e) should be changed to allow PHHWCFs to operate 365 days of the year and that the 30-day limitation is too restrictive.

RESPONSE: Section 67450.30(e) places no restriction on the number of days a PHHWCF may operate. Section 67450.30(e) states that a facility operating not more than thirty calendar days per year, or a facility whose current closure cost estimate is less than $10,000, is not required to provide financial assurance for the cost of closure. The Department believes the commentor misconstrued the regulation to somehow limit the number of days a PHHWCF may operate. However, as noted here, it does not do so, but merely creates an exemption from certain financial assurance requirements for facilities operating not more than 30 days. No change is proposed on the basis of this comment.

COMMENT: Commentor number 7 said the PHHWCF should be operated in a manner that requires the shipment of repacked and prepared wastes every 90 days.

RESPONSE: The PHHWCF regulations were designed to allow the operator to store waste in order to operate cost effectively. Therefore, a maximum amount of storage time (one year) is allowed to enable the operator to consolidate compatible wastes. No change is proposed on the basis of this comment.

COMMENT: Commentor number 7 said section 67450.25, concerning waste analysis requirements, should be clarified in terms of which parameters are required. The commentor said that documentation of results should be mandatory. The commentor recommends that the parameters include pH, specific gravity, oxidizer screen, flammability potential and screen tests for cyanide and sulfides when wastes have a pH greater than 9.

RESPONSE: The Department believes such stringent testing requirements would impose considerable and unnecessary costs on owners and operators of PHHWCFs. Other requirements [e.g., the waste analysis requirement specified in section 67450.25(a)(2)(A) as modified in response to an earlier comment, and sections 66265.14 and 66265.16 which are incorporated by reference in section 67450.25(a)(2)(A)] ensure that wastes received at PHHWCFs will be safely managed, thus making the proposed change unnecessary. No change is proposed on the basis of this comment.

COMMENT: Commentor number 8 said that many of these PHHWCFs were located at landfills and wondered if loadcheck waste could be stored with the HHW.

RESPONSE: The law allows a PHHWCF operator to accept waste generated by a loadcheck program and to store those wastes with

household hazardous wastes. However, the PHHWCF operator has the option of accepting or denying a particular waste.

COMMENT: Commentor number 8 said roofing tar is too specific a category in the regulation that deals with consolidation of waste. The commentor said the regulations appear to suggest this is a type of waste but the notification form also says roofing tar which suggests the category is specifically roofing tar. The commentor said the category should be broad enough to also include other solvent-containing semi-solids or resins. The commentor said many facilities also include glues, adhesives, sludges from paint thinners and inks and the category should be a little more broad. The commentor suggested using "organic resins such as roofing tar" for that category.

RESPONSE: The Department thinks the term "organic resins" is too broad; however, we agree that consolidations of roofing tar, and other resinous materials like "caulking and patching compounds, and adhesives" should be permitted, and we have therefore amended section 67450.25(a)(4)(D) and Form 1094B accordingly.

COMMENT: Commentor number 8 wanted to know if the facility would be able to consolidate spray paint cans and aerosol cans under a PBR.

RESPONSE: These wastes can be consolidated as long as their contents are chemically compatible.

COMMENTATORS ON PROPOSED PERMIT BY RULE REGULATIONS FOR PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES (R-95-03)

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RESPONSES TO COMMENTS
RECEIVED FROM AUGUST 9, 1996 THROUGH AUGUST 28, 1996
CONCERNING PROPOSED PERMIT BY RULE REGULATIONS FOR PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES (R-95-03)

COMMENT: Commentor number 1 supports the proposed regulations, including the latest revisions, and suggests that section 67450.25(a)(4)(D) be amended to allow the consolidation of waste contained in aerosol cans, if that activity is conducted with the appropriate equipment and the approval of the local fire department and air quality management district.

RESPONSE: In response to the earlier suggestion (from commentors 4 and 5) resulting in amendments to this section, the Department explained that it was "proposing language sufficiently broad to cover most of the types of materials that would be received by these facilities and consolidated". To the extent that the wastes contained in aerosol cans are paints or solvent-containing wastes, for example, the consolidation of those wastes is contemplated under section 67450.25(a)(4)(D) where the wastes are compatible, if the consolidation is conducted in an area approved by the local fire department and air quality management district, and the consolidation, particularly as it may involve the puncturing of pressurized cans, is consistent with Federal and State law (as it would be in cases involving household and CESQG wastes). The requirement to use appropriate equipment for all PHHWCF operations, including consolidations, is embodied in the general facility standard of section 66265.31 which is incorporated by reference in section 67450.25(a)(4)(B) and made applicable to owners and operators of PHHWCFs permitted by rule. Pursuant to section 66265.31, PHHWCFs must be operated (in all respects) to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the environment which could be harmful to human health or the environment. Aerosol containers of paint, pesticides, lubricants, and adhesives collected from households and CESQGs (i.e., the overwhelming majority of aerosol cans that are likely to be received by these facilities), can be handled under this provision. Section 67450.25(a)(4)(D) does not need to be amended to accommodate the commentor's interest. No change is proposed on the basis of this comment.

COMMENTATORS ON PROPOSED PERMIT BY RULE REGULATIONS FOR PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES (R-95-03)

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