



Below is the DRAFT text for the proposed Land Use Covenant regulations. The Department will be holding a public workshop to discuss these regulations please visit this web site for further information on these regulations or to be added to the Department's mailing list regarding these regulations please contact:

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**TEXT OF PROPOSED REGULATIONS**  
**(Add to Title 22, California Code of Regulations (CCR), Chapter 39**  
**Section 67391.1)**

**§ 67391.1 Requirements for Land Use Covenants**

(a) Except as provided in subsection (f) of this section, a land use covenant imposing appropriate limitations on land use shall be executed and recorded when:

(1) Facility closure, corrective action, remedial or removal action, or other response actions are undertaken pursuant to chapter 6.5 or 6.8 or 6.85 of Division 20 the Health and Safety Code, or article 1 of chapter 1, part 10.5 of the Education Code; and

(2) Hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land.

(b) The Department shall not approve or concur in a response action decision document which includes limitations on land use or other institutional controls, unless the limitations or controls are clearly set forth and defined in the response action decision document. Except as provided in subsection (f) of this section, any response action decision document shall specify that the limitations or controls will be incorporated into an appropriate land use covenant as required by this section. The Department shall provide public notice of the response action decision document in a manner that meets the requirements of Health and Safety Code Section 25223 or Section 25398.6(l).

(c) Except as provided in subsection (f) of this section,

(1) The Department shall not certify that a response action has been satisfactorily completed (except for any necessary long term operation and maintenance activities) until

any required land use covenant has been signed by the Department and the landowner and recorded in the county where the land is located, or

(2) The Department shall not acknowledge certification of closure of a hazardous waste disposal unit until such land use covenants required by this section also meet the requirements of Sections 66264.119 or 66265.119 of the California Code of Regulations as applicable.

(d) All land use covenants pursuant to this section shall be executed by the Department and the landowner and shall be recorded in the county where the land is located. All land use covenants shall run with the land pursuant to Civil Code Section 1471 and/or Health and Safety Code Sections 25202.5, or 25222.1, or 25355.5, or 25398.7 and 25396(l) and shall continue in perpetuity unless modified or terminated in accordance with applicable law.

(e) The Department shall not consider property owned by the federal government to be suitable for transfer where hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property at levels which are not suitable for unrestricted use of the land, unless an appropriate land use covenant has been or will be executed by the Department and the federal government and recorded in the county where the land is located in accordance with this section.

(f) Whenever the Department determines that it is not feasible to record a land use covenant for sites, it may use other mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property. Examples include:

(1) Federal property: Such mechanisms may include, but are not limited to, the base masterplan for the federal facility, physical monuments or a memorandum of agreement between the base commander and the Department.

2) Publicly Owned Tidelands Trust Property: Such mechanisms may include, but are not limited to physical monuments, or a memorandum of agreement or consent agreement between the Department and the Trustee for the Tidelands Trust Property.

If the Department subsequently determines that it is feasible to record land use covenants for such sites, the Department shall ensure that the land use covenants are recorded in accordance with (d).

(g) For purposes of this section:

(1) "Department" means the Department of Toxic Substances Control."

(2) "Institutional controls" means legal and administrative mechanisms designed to prevent exposure to contamination left on site after remediation. Examples include deed notices and restrictions, conservation easements, zoning, groundwater restrictions, soil testing and removal requirements, and public information tools.

(3) "Response action decision document" means a remedial action plan, removal action workplan, record of decision, closure plan, documents written pursuant to a corrective action order or corrective action consent agreement, or other similar documents which formally selects an action to be taken in response to the release or threatened release of hazardous materials, hazardous wastes or constituents, or hazardous substances.

(4) "Unrestricted use of the land" means that the land may be used for any purposes.

#### **§ 67391.1 (h) Rescission of Department Approval.**

The Director, in consultation with the Secretary for Environmental Protection, shall conduct a review within five (5) years of the effective date of the regulations in Section 67391.1 et seq. to determine whether the regulations should be retained, revised, or repealed.

NOTE: Authority cited: Sections 25351.5, and 25150 of the Health and Safety Code.  
Reference: Sections 25202.5, 25222.1, 25223, 25355.5, 25398.6, and 25398.7, Health and Safety Code.