

California Environmental Protection Agency

Framework for the
Implementation of Health and Safety Code
Section 25204.6 (b)
(Senate Bill (SB) 1082)

Background

Section 2 of SB 1082 (Calderon, 1993) added Section 25204.6 to the Health and Safety Code (HSC). This section addresses the overlapping jurisdiction of the Department of Toxic Substances Control (DTSC) and the State Water Resources Control Board/Regional Water Quality Control Boards (SWRCB/RWQCBs) at hazardous waste facilities that are subject to regulation of HSC Section 25180 et seq. and the Water Code.

Section 25204.6 (quoted below in bold) requires that a hazardous waste facility regulation and permitting consolidation program be developed which shall provide for the following:

- **The grant to either the department or the State Water Resources Control Board and the California regional water quality control boards of sole authority to implement and enforce the requirements of Article 6 (commencing with Section 66264.90) of Chapter 14 of, and Article 6 (commencing with Section 66264.90) of Chapter 15 of, Division 4.5 of Title 22 of the California Code of Regulations and of Article 5 (commencing with Section 2530) of chapter 15 of Division 3 of Title 23 of the California Code of Regulations.**
- **The development of a process for ensuring, at each facility which conducts off-site hazardous waste treatment, storage, or disposal activities, or which conducts on-site treatment, storage, or disposal activities which are required to receive a permit under the federal act, and which is required to clean up or abate the effects of a release of hazardous substance pursuant to Section 13304 of the Water Code, or which is required to take corrective action for a release of hazardous waste or constituents pursuant to Section 25200.10, or both, that sole jurisdiction over the supervision of that action [meaning oversight of those corrective action activities] is vested in either the department or the State Water Resources Control Board and the California regional water quality control boards.**
- **The development of a unified hazardous waste facility permit, issued by the department, which incorporates all conditions, limitations, and requirements imposed by the State Water Resources Control Board or the California regional water quality control boards to protect water quality, and incorporate all conditions, limitations, and requirements imposed by the department pursuant to this chapter.**

- The development of a consolidated enforcement and inspection program designed to ensure effective, efficient, and coordinated enforcement of the laws implemented by the department, the State Water Resources Control Board, and the California regional water quality control boards, as those laws relate to facilities conducting off-site hazardous waste treatment, storage, or disposal activities, and to facilities conducting on-site treatment, storage, and disposal activities which are required to receive a permit under the federal act.

The Framework described below will be developed into regulations and incorporated into Title 27 in order to clarify the roles and responsibilities of DTSC and the SWRCB/RWQCBs.

Incorporation by Reference of Waste Discharge Requirements Into Hazardous Waste Facility Permit. The SWRCB and the RWQCBs will impose waste discharge requirements and groundwater monitoring plans and provide them to DTSC to be incorporated by reference in permits issued by DTSC for hazardous waste facilities covered by HSC Section 25204.6(b). Groundwater monitoring plans for the purposes of this Framework means the groundwater quality sampling and analysis plan as specified in Title 22 and Title 23, which includes monitoring, well location, design, sampling methods and frequency, and constituents of concern. These plans must be reviewed and approved by a registered geologist or registered civil engineer at either the RWQCBs or the SWRCB. The RWQCBs may conduct a site visit for the purpose of preparing waste discharge requirements and groundwater monitoring plans. Before visiting a site, the RWQCBs shall notify DTSC of the site visit. Both agencies will coordinate work plans to ensure that waste discharge requirements and groundwater monitoring plans are prepared in coordination with DTSC's permit process and individual facility permit schedules. The SWRCB and RWQCBs shall modify their work plans to enable DTSC to meet RCRA grant commitments and legislative mandates. The RWQCBs shall update all waste discharge requirements to include Article 5, Chapter 15, Title 23 requirements. The RWQCBs will not issue new waste discharge requirements to a permitted facility that does not have RWQCB-issued waste discharge requirements until such time as the permit is renewed or changes or conditions at the facility necessitate revisions to the water quality requirements. A permit modification is not required until there is a change in the permit condition. Changes in the waste discharge requirements that result in changes to permit conditions, as listed in Appendix I of Chapter 20, Title 22, shall be subject to the procedures described in Section 66270.42. Any changes to the waste discharge requirements unrelated to hazardous waste management for a hazardous or solid waste management unit will necessitate a Class I permit modification until regulations can be modified to exempt such changes from the permit modification process. DTSC will not issue water quality requirements in place of the RWQCBs, unless the RWQCBs fail to issue waste discharge requirements in coordination with DTSC's permit process. In the

event that DTSC, with the agreement of the applicable RWQCB, does include water quality requirements in the hazardous waste facility permit in lieu of the RWQCBs' waste discharge requirements, the RWQCBs will not issue waste discharge requirements. The Framework described above will be developed into regulations and incorporated into Title 27 to clarify the roles and responsibilities of DTSC and the SWRCB/RWQCBs.

Section 25204.6 requires that one agency have the sole authority to implement and enforce specified requirements which deal with water quality monitoring. Requirements related to landfill siting, liners, and leachate collection systems are not included in the referenced sections in Titles 22 and 23 but were identified by DTSC and the SWRCB as being areas of potential duplication between the waste discharge requirements and the hazardous waste facility permit. DTSC agrees not to duplicate these additional requirements in the hazardous waste facility permit but to include these requirements which are part of the waste discharge requirements issued by the RWQCB into the hazardous waste facility permit in the same manner as those specified by Section 25204.6.

Implementation of Groundwater Protection Policy, Standards, and Guidance. The SWRCB and the RWQCBs will update their regulatory requirements to be no less stringent than DTSC regulatory requirements, and RCRA guidance and policy, associated with water quality and groundwater monitoring to ensure the waste discharge requirements and groundwater monitoring plans are consistent with RCRA. DTSC will provide the training and guidance necessary for this purpose. DTSC will ensure that the waste discharge requirements conform with RCRA requirements. Similarly, the SWRCB/REQCB will provide the training and guidance necessary for DTSC to implement the waste discharge requirements. In the event that DTSC determines that the waste discharge requirements do not incorporate RCRA, DTSC shall bring the issue to the attention of the RWQCB that issued the waste discharge requirements. In the event that resolution cannot be reached between DTSC and the RWQCB, the Secretary for Environmental Protection shall be the final administrative arbiter. If protection of water quality requires adoption or amendment of water quality regulations more stringent than RCRA regulations, those changes will be adopted by the SWRCB in accordance with Division 7 of the Water Code. In order to assist the applicant and facilitate the permitting process, the RWQCB imposing the waste discharge requirements and groundwater monitoring plant may be a participating permit agency, pursuant to SB 1185. DTSC may either be a consolidated permit agency or a participating permit agency, pursuant to SB 1185.

Facility Oversight and Inspection and Enforcement. The RWQCBs will review the groundwater monitoring system design or water quality sampling and analysis plans. The RWQCBs will include the resulting water quality requirements in their waste discharge requirements,

which are incorporated into the hazardous waste facility permit by reference. DTSC will carry out all oversight responsibilities associated with its hazardous waste facilities, including waste discharge requirements. DTSC will inspect the implementation of the RWQCB-approved groundwater monitoring system through compliance monitoring evaluations and operation and maintenance inspections, and DTSC shall receive all monitoring reports from the facility owner/operator. At the request of the RWQCBs, DTSC will provide a copy of these monitoring reports to the RWQCBs. Questions related to the adequacy of the groundwater monitoring system design or sampling and analysis discovered during DTSC's inspection or review of the monitoring data shall be referred to the RWQCBs for potential changes to the waste discharge requirements. Enforcement actions for violation of the specific permit requirements prepared by the RWQCBs will be coordinated with the appropriate RWQCB before initiation of enforcement related to those violations. DTSC will be the sole inspection and enforcement agency for hazardous waste facilities. The Framework described above will be developed into regulations and incorporated into Title 27 in order to clarify the roles and responsibilities of DTSC and the SWRCB/RWQCBs.

Underground Storage Tanks. Underground storage tanks, while outside the scope of SB 1082, is another area that has been identified where DTSC and the SWRCB/RWQCBs have duplicative jurisdiction. In order to avoid continued duplication, underground storage tanks will be regulated in the following manner.

The regulations adopted by the SWRCB for underground storage tanks will apply to generators or underground storage tanks operating under permit-by-rule, conditional exemption, or conditional authorization. DTSC's regulations regarding underground storage tanks will not apply to these facilities. DTSC will be responsible for adopting and implementing regulations for underground storage tanks that are required to obtain a hazardous waste facility permit under either the full permit or the standardized permit tiers. The SWRCB/RWQCB regulations will not apply to these facilities.

Corrective Action. Corrective action oversight is under the authority of DTSC (for RCRA on-site and off-site treatment, storage, and disposal facilities and non-RCRA off-site treatment, storage, and disposal facilities). In the event of a release at any time from a regulated unit or solid waste management unit, DTSC will have the responsibility for characterization and remediation of that release. Where DTSC is the lead agency, DTSC will consult with the SWRCB and/or the RWQCBs when issues of groundwater protection and cleanup are part of the corrective action. Similarly, where the RWQCB is the lead agency, the RWQCB will consult with DTSC to ensure the clean up activities are consistent with RCRA. The Water Boards will issue waste discharge requirements as required by law where the proposal for remediation results in a discharge of waste to surface waters or injection or

placement of waste in groundwaters which have not been affected by the release from the facility. DTSC shall consult with the RWQCBs to assure corrective action complies with applicable basin plans and water quality policies for cleanup of both hazardous and nonhazardous waste constituents.

Corrective action at many RCRA facilities may be currently overseen by either the RWQCB or DTSC. At sites where there is already a single agency overseeing corrective action, the corrective action oversight will continue until that corrective action is complete. DTSC will oversee any corrective action identified in the future at sites where no ongoing corrective actions are otherwise in process. At sites under corrective action where both agencies have an oversight role, DTSC and the SWRCB/RWQCBs have identified the primary oversight agency. The following criteria were used by DTSC and the SWRCB/RWQCBs as guidelines to determine which agency will have oversight responsibility for existing facilities currently subject to corrective action:

- Sites to be overseen by the RWQCBs:
 - Refineries
 - Sites in which the hazardous substance portion of the cleanup is a minor portion of the entire cleanup.
 - RWQCBs acting as lead in the past with minor DTSC involvement
- Sites to be overseen by DTSC:
 - Corrective action order written
 - Permit issued or interim status granted with corrective action included
 - Sites with minor RWQCBs' involvement

The RWQCBs will continue oversight of corrective action at approximately 79 facilities. If the RWQCBs are conducting inspections and enforcement or other corrective action activities in lieu of DTSC, DTSC will not duplicate the inspections, enforcement, or oversight of cleanup activities. The RWQCBs will consult with DTSC to ensure that the activities performed by SWRCB/RWQCBs are RCRA equivalent. DTSC will continue oversight of corrective action at all other hazardous waste facilities.

This approach avoids wasteful new effort by an agency to familiarize itself with site characterization and remediation at sites where the other agency is already actively involved.

Appeal of Corrective Action oversight Agency Designations. The attached oversight agency designations will become effective January 1996. Site owners or operators that wish to request an alternative oversight agency must submit a request to the Secretary no later than April 30, 1996. Any such request shall be reviewed by the Site Designation Committee established pursuant to Chapter 6.65 of the Health and Safety Code, in accordance with the procedure established for the implementation of that Chapter and using the relevant factors of Health and Safety Code section 25262. For the purposes of determining the appropriate oversight agency for the attached sites, the Secretary will only consider requests for designating either the Department of Toxic Substances Control or the Regional Water Quality Control Board with jurisdiction over the subject site.

Efficiency Benefits of Framework. The implementation of SB 1082 .that is outlined in the Framework was developed to eliminate overlapping and redundant regulatory oversight. The elimination of duplication will result in a more efficient use of resources by DTSC and the RWQCBs. In addition, the regulated community will only have to submit reports and respond to one oversight agency. It should be recognized that current resources are not sufficient to support existing workload. Both DTSC and SWRCB have documented this situation in earlier Budget Change Proposals (BCPs).

Table 1 summarizes by agency the increase and decrease in current resources associated with permitting and inspection and enforcement of that permit as a result of implementation of the Framework. The most important assumption is that the workload for the current year is representative of future years. The RWQCBs' estimates also do not take into account the additional workload necessary to comply with RCRA administrative requirements.

TABLE 1

		Increase in Resource (PY)	Decrease in Resource (PY)
DTSC	Permitting	None	Incorporate the RWQCB's waste discharge requirements into the hazardous waste facility permit (estimate a 2 PY decrease with an additional 4 PY decrease in FY 96/97)
	Inspection and Enforcement	Need to inspect/enforce for non-hazardous component as well as hazardous component	
RWQCB	Permitting	Issue waste discharge requirements (WDRs) on facilities that currently don't have WDRs (estimate 2 PY increase)	
	Inspection and Enforcement		No longer doing inspection/enforcement of WDRs for hazardous waste management units (estimate 1.7 PY decrease)

DTSC Net Change	6 PY decrease*
RWQCB Net Change	.3 PY increase

*To be applied toward permitting backlog and corrective action. DTSC will conduct an annual review and assessment of hydrogeological support needs for permitting, inspection, and enforcement as part of the annual workplan and budget development process.

Roles and Responsibilities Pursuant to SB 1082

For applicants applying for a new hazardous waste facility permit, permit modifications, permit renewals, and post-closure permits.

- Applicant submit Part B application to DTSC.
- RWQCB will review the following components in the Part B permit application and make a final determination:
 - groundwater monitoring
 - water quality sampling and analysis plan
 - closure plan/post-closure plan for protection of water quality
 - design of land disposal unit-liners, covers, leachate collection for water quality protection and siting
 - siting for water quality protection

DTSC will review the following components in the Part B permit application and make a final determination:

- closure/post-closure plan for non-water quality requirements and financial assurance/liability
- cover design for air emissions
- the remainder of the permit application requirements in Article 2, or the permit modification requirements in Article 4, Chapter 20, Title 22 that do not pertain to water quality.
- The RWQCB will give a copy of the waste discharge requirements to DTSC for incorporation in the hazardous waste facility permit.
- DTSC will oversee monitoring well installation construction of the land disposal units in accordance with the RWQCB's waste discharge requirements and issue construction certification letter.

DTSC will prepare Compliance Monitoring Evaluation (CME) and Operation and Maintenance (O&M) Reports in accordance with the RWQCB's waste discharge requirements.

DTSC will enforce all conditions in the hazardous waste facility permit including the waste discharge requirements.

Corrective Action

- DTSC will be responsible for corrective action oversight pursuant to HSC Section 25200.10.
- The RWQCB will issue WDR only if there is a discharge of waste to surface waters or injection or placement of waste in groundwaters which have not been affected by the release.
- Sites where the RWQCB will no longer act as lead for corrective action and that are currently subject to cleanup and abatement orders or waste discharge requirements requiring cleanup and abatement issued by the RWQCBs will remain subject to those orders until such time as DTSC begins the RCRA Facility Assessment (RFA) to issue the hazardous waste facility permit or issues a Corrective Action Order pursuant to HSC Section 25187 for corrective action activities. DTSC will recognize work done in compliance with Regional Board Orders.
- The RWQCB may continue to enforce the waste discharge requirements or other Board Orders for corrective action that is RCRA equivalent at those facilities where the RWQCB will be providing insight.