ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–OLEM–2024–0124; FRL–9376–01–OLEM]

RIN 2050–AH30

Technical Updates to the RCRA Hazardous Waste Permitting Regulations—Permitting Technical Updates Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing technical updates to the regulations implementing the Resource Conservation and Recovery Act (RCRA) governing hazardous waste treatment, storage, and disposal facilities (TSDFs), as well as associated permitting requirements. The proposal also includes a few conforming technical updates to the generator and transporter regulations. The RCRA hazardous waste TSDF permitting regulations have remained largely unchanged for over three decades, despite evolving standards and practices. Collectively, these revisions are intended to address inadvertent errors, remove obsolete references, reflect current information and standards, and implement targeted updates to the RCRA permitting regulations to improve clarity, consistency, and efficiency in the hazardous waste TSDF permitting program. Through a separate **Federal Register** document, EPA will be seeking input on areas in the RCRA permitting program and permitting regulations to consider for permitting policy or regulatory reform. This proposed rule helps clear the way for potential future regulatory actions that could improve implementation of the RCRA hazardous waste permitting program. It serves as a maintenance action and does not preclude the possibility of future permitting reform.

DATES: Comments must be received on or before December 28, 2026. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 28, 2026.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2024–0124, by any of the following methods:

- *Federal Rulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email:* ''*docket_OLEM@epa.gov*.'' In the email, include Docket ID No. EPA–HQ–OLEM–2024–0124 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Resource Conservation and Recovery Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday-Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, refer to the ''Public Participation'' heading of the

FOR FURTHER INFORMATION CONTACT: For general information about this document please reach out to the following contacts from the Waste and Chemical Implementation Division, Office of Resource Conservation and Recovery, Environmental Protection Agency, 1200 Pennsylvania Avenue, Mail Code 5303T, Washington, DC 20460:

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I. Public Participation

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2024–0124, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

For the reader's convenience, EPA has provided a background description of existing requirements in several places throughout this preamble. In the absence of a specific request for comment and proposed change to the identified provisions, these descriptions do not reopen any of the described provisions nor reconsider the underlying regulations. The scope of this proposal is limited to the changes specifically identified and EPA is not reconsidering, reopening, or soliciting comment on other RCRA regulations.

Due to the length and complexity of the proposal, EPA requests that commenters identify the relevant topic and section number in their comments by using comments codes. For example, use ''PM–6b'' for section V.A.6 Permit Modification comments for V.A.6.b. Notification of Modification Requests. The codes are given at the end of each section.

Through this action, EPA is soliciting comment on targeted technical updates. EPA will be seeking input on topics for RCRA permitting reform through a separate **Federal Register** document.

II. General Information

A. Does this action apply to me?

This action applies to owners and operators of facilities that treat, store, or dispose of hazardous waste. A small subset of proposed changes which relate to the land disposal restriction regulations and requirements relating to contingency planning, incident reporting, and manifesting would also apply to generators of hazardous waste. In addition, a small subset of proposed changes which relate to transfer facilities would also apply to transporters of hazardous waste. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include: (NAICS codes) 562—Waste Management and Remediation Services; 325—Chemical Manufacturing; 928—National Security and International Affairs; 331—Primary Metal Manufacturing; 324—Petroleum and Coal Products Manufacturing; 332—Fabricated Metal Product Manufacturing; 336—Transportation Equipment Manufacturing; 321—Wood Product Manufacturing; 424—Merchant Wholesalers, Nondurable Goods; 327—Nonmetallic Mineral Product Manufacturing; 611—Educational Services; 334—Computer and Electronic Product Manufacturing; 541—Professional, Scientific, and Technical Services; 221—Utilities; 333—Machinery Manufacturing; and, 339—Miscellaneous Manufacturing. To determine whether your entity is affected by this action, you should carefully examine the proposed changes to the regulatory text, as well as applicability provisions in 40 CFR parts 124, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is proposing various technical updates to the RCRA hazardous waste treatment, storage, disposal and permitting standards. These proposed changes intend to reflect current information or standards, improve understanding and compliance with the regulations, and make over 400 technical corrections and other conforming changes to address inadvertent errors and remove obsolete references.

Please note that in this proposal, EPA is not reconsidering, proposing to reopen, or otherwise soliciting comment on any other provisions of the existing RCRA regulations beyond those specifically identified in this proposal. At the same time, this action does not preclude the possibility of future permitting reform to improve implementation of the RCRA hazardous waste permitting program.

C. What is the Agency's authority for taking this action?

EPA is proposing these regulations under the authority of sections 1006, 2002(a), 3002, 3003, 3004, 3005, 3010, 3013, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended, by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6905, 6912(a), 6922, 6923, 6924, 6925, 6930, 6934, and 6974. These public laws combined are commonly referred to as the ''Resource Conservation and Recovery Act'' (RCRA) and will be referred to as such for the remainder of this document. RCRA section 1006 provides EPA with the authority to integrate RCRA's requirements with other Acts. Section 2002(a) provides EPA the general authority to prescribe regulations to carry out the functions of RCRA. Section 3002 provides EPA the authority to establish standards applicable to generators of hazardous waste. Section 3003 provides EPA the authority to establish standards applicable to transporters of hazardous waste. Section 3004 provides EPA the authority to establish standards applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste. Section 3005 provides EPA the authority to establish regulations requiring each person owning or operating a hazardous waste treatment, storage, and disposal facility (TSDF) to have a permit. Section 3010 makes regulations promulgated pursuant to RCRA effective in the manner described in the Act. Section 3014 provides EPA with the authority to require monitoring, testing, or analysis for hazardous waste. Section 7004 provides EPA with the authority to review petitions as well as to require and develop standards for public participation.

D. What are the incremental costs and benefits of this action?

Based on the universe of affected facilities, permits, and activities, as well as the estimated labor and non-labor costs associated with complying with the provisions of the proposed rule, EPA estimates that the universe of permitted facilities and new applicants, on average, will have a total of approximately $0.42 million per year (2025 dollars) in labor and non-labor cost savings (under a 3 percent discount rate). In addition, permitting authorities are expected to realize annual cost savings of $0.50 million (2025 dollars, under a 3 percent discount rate). The annualized cost savings of the proposed rule for permitted facilities, new applicants, and permitting authorities combined are $0.92 million per year (2025 dollars, under a 3 percent discount rate).

For a detailed description of costs and benefits of regulatory revisions proposed in this action, refer to the Economic Assessment available in the docket.

III. Background

When the Resource Conservation and Recovery Act was enacted in 1976,

Congress recognized that hazardous waste should be treated, stored, or disposed of in a manner that minimizes present and future threats to human health and the environment. To address these risks, EPA promulgated extensive technical standards for the design and safe operation of hazardous waste management units (HWMUs) at TSDFs. These standards are codified in Title 40 of the Code of Federal Regulations (CFR) parts 124 and 260 through 279.

Parts 270 and 124 provide requirements pertaining to the hazardous waste permitting process.[1] Part 264 sets minimum national standards for managing hazardous waste at fully permitted TSDFs, while requirements for interim status facilities are included in part 265.[2] Most changes being proposed in this action are located in parts 264, 265, and 270.

This action also proposes revisions to parts that are not core to hazardous waste permitting: parts 124, 260, 261, 262, 263, 266, 267, 268, 271, 273, and 279. Revisions to these parts are included in this proposal because standards and requirements described in these parts may be referenced by the RCRA permit, or because conforming changes in these parts would be needed to ensure consistency with revisions to the TSDF and/or permitting regulations. Part 124 describes the general requirement to obtain a RCRA permit and defines public notice requirements. Part 260 includes general provisions relating to the hazardous waste management system under RCRA, including definitions that apply to parts 260–273. Part 261 discusses identification and listing of hazardous waste. Part 262 describes standards applicable to generators of hazardous waste. Part 263 describes standards applicable to transporters of hazardous waste. Parts 266 and 267 discuss standards that apply to specific activities, types of waste, or types of waste management facilities; these standards often include provisions that must be cited in the operating permit. Part 268 describes land disposal restrictions that apply to TSDFs, as well as other regulated entities. Part 271 describes requirements for the authorization of state hazardous waste programs. Part 273 describes the standards for universal waste management. Part 279 describes the standards for the management of used oil.

Permitted facilities. TSDFs are required to obtain a permit, which provides TSDF owners and operators with the legal authority to treat, store, or dispose of hazardous waste and details how the facility must comply with the regulations. The permit is a legally binding document that establishes the administrative and technical conditions under which hazardous waste at the facility must be managed. In this document, the term ''permit'' generally refers to the RCRA TSDF permits described here, unless otherwise specified. Permits also serve as an implementation mechanism and as a means by which EPA can track waste management at facilities that handle hazardous waste. Owners and operators of facilities that do not comply with permit provisions are subject to RCRA enforcement actions, including financial penalties.

Permits can be issued by EPA or authorized state RCRA programs. The permitting authority and TSDF owners or operators engage with each other throughout all stages of the permitting process, from preparation of the permit application, through permit issuance, including permit modifications and renewals, until permit termination. The process also includes public participation at each stage, as applicable. For new TSDFs seeking a permit, and facilities seeking a permit renewal, the owner and operator must submit a comprehensive permit application that addresses all applicable regulatory standards, including general facility provisions, unit-specific requirements, closure and post-closure requirements, financial assurance standards, and any applicable groundwater monitoring and air emissions provisions. The permit application must demonstrate that the permittee's methods of handling the waste are consistent with the level of protection of human health and the environment required by RCRA. The permit application is divided into two parts, Part A and Part B. The Part A application requires basic information about the facility. The Part B application includes site-specific information associated with the waste management activities that will be conducted at the facility, such as chemical and physical analyses of the hazardous waste, and includes geologic, hydrologic, and engineering data. This process provides a mechanism for the permitting authority to request additional information through a notice of deficiency and includes an opportunity for public review and comment. Ultimately, the permitting authority makes the decision to issue or deny the permit.

EPA views permits as living documents that can be modified to allow facilities to implement technological improvements, comply with new environmental standards, respond to changing waste streams or conditions, and generally improve waste management practices. Once a permit has been issued, changes may be necessary. Permit modification procedures provide owners and operators and the permitting authority with flexibility to change permit conditions, with public notification and participation, as applicable.

Interim status facilities. Many TSDFs were already in existence and operating when they became subject to RCRA regulatory requirements as a result of a statutory or regulatory change. These owners and operators were immediately subject to the RCRA requirements, including the requirement to obtain an operating permit. Such facilities were allowed to obtain ''interim status,'' which allowed them to continue operating until they were either issued a permit or until applicable closure and post-closure responsibilities are fulfilled.

Under interim status, a facility can operate without a permit as long as it complies with certain general facility and unit-specific TSDF standards in 40 CFR part 265, until the permitting agency makes a final permit determination. Currently, fewer than 10 facilities are operating under interim status and actively managing hazardous waste.

Through this action, the Agency is proposing several technical updates to address inadvertent errors and remove obsolete references; reflect current information and standards; and incrementally improve clarity, consistency, and efficiency in the hazardous waste TSDF permitting program.

IV. Methodology

EPA developed this proposal from ideas compiled from numerous sources over several years regarding potential revisions to the RCRA permitting regulations. While some cited materials are older, the issues they address remain current. The primary source of potential

[1] Unless otherwise noted, the references to ''parts'' or ''sections''(''§ '') in this preamble are to Title 40 of the Code of Federal Regulations (CFR); for example, ''part 270'' means 40 CFR part 270. Regulatory requirements for TSDFs are laid out in part 264 and provide the framework and technical standards used to develop a site-specific RCRA permit.

[2] RCRA ''interim status'' allows existing hazardous waste TSDFs to operate while their permit is processed if they were in existence on the effective date of the applicable regulations, notified EPA (or the authorized state), and submitted a timely Part A application, and they comply with interim-status standards (*e.g.,* part 265). Interim status continues until a final permit is issued or denied, or it terminates for noncompliance or other applicable reasons.

revisions was through ongoing implementation of the RCRA hazardous waste permitting program, wherein issues and suggestions for improvement from EPA implementation staff, authorized state and territories, and regulated entities have been collected and documented over time. Many of these items have been previously considered and clarified by EPA through issuance of program guidance and policy available publicly on the EPA website and RCRA Online.[3]

Additional sources included issues identified by the Office of Enforcement and Compliance Assurance (OECA) through EPA's National Enforcement and Compliance Initiative to Reduce Hazardous Air Emissions for Hazardous Waste Facilities; regulatory revisions made in previous EPA rulemakings, such as EPA's 2016 Generator Improvements Rule (81 FR 85732, November 28, 2016); public comments received through the Executive Order (E.O.) Enforcing the Regulatory Reform Agenda (E.O. 13777[4] of February 24, 2017); and numerous technical corrections received from a firm that delivers training on the RCRA regulations.

V. Discussion of Proposed Changes

EPA's proposed changes focus mainly on the RCRA hazardous waste treatment, storage, and disposal, and permitting regulations, in 40 CFR parts 264, 265, and 270. Additionally, this action proposes changes to regulations located in other parts of the CFR related to hazardous waste permitting, transportation, and generation, located in parts 124, 260, 261, 262, 263, 266, 267, 268, 271, 273, and 279.

EPA is requesting comment on each of the proposed changes discussed in the following subsections, which include proposed changes to clarify language, codify longstanding policy, update standards, and make technical corrections. EPA will use the public comments it receives to make decisions on whether and how to finalize revisions.

To assist public commenter's review, EPA has included two files in the docket to aid in review of this relatively large proposal:

- ''List of Preamble Topics and Regs Covered.pdf.''
- ''Redline Comparison Between Existing and Proposed Regulation Changes.pdf.''

First, the document titled ''List of Preamble Topics and Regs Covered'' lists each topic in the preamble and the regulations covered in each topic. There are hundreds of paragraphs in the regulations that are being revised, and a regulation can be revised for more than one preamble topic. Second, the document titled ''Redline Comparison Between Existing and Proposed Regulation Changes'' presents the proposed changes in a red-line format compared to the existing regulations. Public commenters may find this red-line document particularly helpful in understanding how EPA is proposing to amend the regulations.

A. Technical Updates

EPA is proposing several changes to improve the clarity of various regulatory provisions, reflect current information and standards, enhance clarity, consistency, and efficiency in the hazardous waste TSDF permitting program, and update references to standards established by regulatory programs other than RCRA that are incorporated into the RCRA regulations. These changes are supported by existing policy and analysis established or communicated in EPA memoranda, guidance, or other documents.

This section describes proposed changes organized by the following subjects:

- Permit application (V.A.1),
- Preparedness and prevention, contingency plan and emergency procedures (V.A.2),
- Financial assurance (V.A.3),
- RCRA organic air emission standards (V.A.4),
- General language clarification (V.A.5),
- Permit modification (V.A.6),
- Modernizing public notice (V.A.7),
- Location standards regulatory comments (V.A.8),
- Transfer facility storage period (V.A.9),
- Drip pads (V.A.10).

1. Permit Application

EPA is proposing several changes relating to permit applications for initial permits and permit renewals.

The permit application consists of two parts: Part A and Part B. Part A includes basic facility information, such as location, contact information, and process descriptions. Part B of the RCRA permit application contains both general and specific information that is necessary for EPA to assess whether the applicant will be in compliance with the regulatory standards outlined in 40 CFR part 264. Part B is comprehensive and may contain technical data, drawings, studies, and other descriptive or analytical information, which is the main focus of this section.

The proposed changes described in this section aim to ensure that permit applications provide permitting authorities with the complete information necessary to process RCRA permit applications effectively. The permitting authority needs this information before drafting permit conditions that, if followed, promote compliance with the regulations and protect human health and the environment over the permit term. A permit application must be complete and technically adequate for the permitting authority to conduct a thorough evaluation. For further details, refer to 40 CFR 124.3(a)(2).

Incomplete or insufficient permit applications are a major factor contributing to delays in issuing RCRA permits and renewals. When an incomplete or technically inadequate permit application is submitted, both the permitting authority(ies) and permittee often have to invest significant time and resources to gather the necessary details. This process can involve discussions, requests for additional information, and multiple reviews of resubmitted applications. According to a report by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO),[5] application review accounted for 25% of the total permitting program costs borne by states, surpassing the costs associated with permit issuance, which stood at 21% (while this is from an older report, it is still relevant and informative). EPA anticipates that the proposed clarifications to the regulations will enhance the initial quality and completeness of permit applications. This improvement should reduce the number of iterations required, thereby shortening the overall time needed to complete the permitting process.

The proposed revisions focus on the following permit-application topics:

[3] RCRA Online is an electronic database that indexes thousands of letters, memoranda, publications, and questions and answers issued by EPA's Office of Resource Conservation and Recovery (ORCR). These documents represent past EPA Headquarters interpretations of the RCRA regulations governing the management of solid, hazardous, and medical waste. Available at: *https://rcrapublic.epa.gov/rcraonline/*.

[4] The E.O. was revoked on January 20, 2021, through E.O. 13992 (86 FR 7049). However, the feedback received in response to this order continues to be relevant and informative.

[5] ASTSWMO is an organization representing the 50 States, 5 Territories and the District of Columbia. ASTSWMO published a report January 22, 2007: ''State RCRA Subtitle C Core Hazardous Waste Management Program Implementation Costs,'' available at: *https://astswmo.org/state-rcra-subtitle-c-core-hazardous-waste-management-program-implementation-costs/*. This is also referred to as the ''2007 ASTSWMO Core Report.''

- Permit application information and technical requirements, and
- Permit application submittal timeframe.

EPA is requesting comment on the following proposed changes.

a. Permit Application Information and Technical Requirements

EPA is proposing revisions to several regulatory provisions that reference the application requirements and list the CFR Parts containing technical requirements to be addressed in the application. These proposed revisions are described below for §§ 124.3(a)(2), 270.2, 270.10(c), 270.10(d), 270.14(a), 270.51(a)(1). Additionally, similar updates to § 270.1(a)(3) are discussed.

EPA emphasizes that none of the proposed changes concerning information and technical requirements will limit the permitting authority's ability, allowed under current regulations, to request additional information during the permit drafting process. According to the existing regulations in § 124.3(c), even after an application is deemed complete, the Regional Administrator may request further information from an applicant, but only when necessary to clarify, modify, or supplement previously submitted material. Such requests for additional information will not render an application incomplete.

EPA is proposing to amend § 124.3(a)(2) to reference the full scope of RCRA permit application requirements. Currently, § 124.3(a)(2) outlines the information needed for the permitting authority to begin processing a permit application, but it only references §§ 270.10 (General application requirements) and 270.13 (Contents of Part A of the permit application), which represent just a portion of the applicable requirements. To address this, EPA is proposing to add references to § 270.14 (Contents of Part B; General requirements), and §§ 270.15 through 270.28 (Specific Part B information requirements), as applicable. The current language may leave applicants unaware of the full scope of RCRA information requirements necessary for a complete application, potentially leading to incomplete applications and subsequent delays. The proposed language is expected to improve applicant awareness of required information requirements, and result in more complete and higher quality permit applications. By improving the initial quality of permit applications, the need for resubmissions or revisions may be reduced, potentially shortening the overall timeframe from application submission to permit decision.

EPA proposes to modify § 270.1(a)(3) to clarify that 40 CFR parts 260 and 261 contain technical requirements applicable to the hazardous waste permit program. Currently, § 270.1(a)(3) references the technical requirements ''[. . .] used by permit issuing authorities to determine what requirements must be placed in permits [. . .].'' However, while parts 260 and 261 include technical requirements applicable to exemptions, variances, and exclusions, which are essential for determining permit conditions, § 270.1(a)(3) does not reference them. The proposed amendment to include references to 40 CFR parts 260 and 261 in § 270.1(a)(3) aims to provide greater clarity for permit applicants.

EPA is proposing to amend the definition of ''Application'' in § 270.2 (Definitions) to explicitly state that the information in the permit application must reflect the standards set forth in specific CFR Parts. This proposed change, which includes adding the text ''and the information necessary for EPA to assess whether the applicant is in compliance with the technical requirements of parts 260, 261, 264, 266, 267, 268, and 270,'' clarifies the full scope of information required in a permit application for the permitting authority to make an informed permitting decision. The amendment emphasizes that the application must include current, correct, technically adequate, and complete information for all owner's and operator's activities at the facility, including any claimed exemptions, variances, and exclusions (primarily from parts 260, 261, and 270).

The proposed revision for the definition of ''Application'' in § 270.2 would align the list of application or technical requirements with the revisions proposed for §§ 124.3(a)(2) and 270.1(a)(3), ensuring consistency across these regulatory provisions. Through this amendment, EPA aims to reduce misunderstandings about permit application requirements that could complicate the permitting process, thereby improving clarity and understanding of the requirements and facilitating a more efficient permit application process. Additionally, EPA is proposing minor changes to the definition of ''Application'' to include language describing states authorized by EPA to implement the RCRA program, as well as references to the contents of Part A of the RCRA application (per § 270.13). These minor revisions aim to enhance clarity and make the regulations easier to read. For other revisions to this definition in § 270.2, refer to EPA's proposed technical correction described in section V.B.1., which clarifies that the contents of Part B of the RCRA application are found in §§ 270.14 through 270.28 (and not § 270.29).

EPA is proposing to amend § 270.10(c) ''Completeness'' to clarify that a complete application must include all of the information required under the regulations for both Part A and Part B of the RCRA permit application. Specifically, EPA is proposing to add language explicitly referencing the contents of the Part B portion of the permit application, which reflects the standards promulgated in parts 260, 261, 264, 266, 267, 268, and 270. In addition, EPA is proposing to rephrase the last sentence to add ''or if the applicant fails to submit'' to the existing sentence on denying a permit before receiving a complete application. The proposed sentence would read ''The Director may deny a permit for the active life of a hazardous waste management facility or unit before receiving, or if the applicant fails to submit, a complete application for a permit.'' This addition clarifies that the absence of an application can prompt the same response as an incomplete application.

EPA is proposing to amend § 270.10(d) ''Information requirements'' under the general application requirements to clarify the scope of information required in a permit application. The revisions aim to enhance clarity in the language. Specifically, the amendment clarifies that the forms provided by the Director include both the Part A form and supplemental forms. Additionally, the proposed revision specifies that the required information should include all the information necessary to demonstrate compliance with the technical requirements of parts 260, 261, 264, 266, 267, 268, and 270 and adds a reference to § 270.1(a)(3). This provision is also amended by a proposed technical correction, described in section V.B.1., which states that the contents of Part B of the RCRA application are in §§ 270.14 through 270.28 (and not § 270.29).

EPA proposes to amend § 270.14(a) (Contents of part B: General requirements) to clarify the contents of Part B of the permit application must reflect all applicable standards in the RCRA regulations. Specifically, EPA is proposing to state that the Part B information requirements must reflect the standards promulgated in parts 260, 261, 266, 267, 268, and 270, in addition to part 264, which is already referenced in the existing regulation. As stated

above regarding similar revisions to identify the CFR Parts, EPA aims to minimize misunderstandings about permit application requirements that could complicate the permitting process, thereby improving clarity and facilitating a more efficient permit application process. Additional edits are proposed to provide clarity in § 270.14(a).

EPA is also proposing non-substantive wording changes in § 270.14(a) to improve readability. This provision is also amended by a proposed technical correction, described in section V.B.1., which states that the contents of Part B of the RCRA application are in §§ 270.14 through 270.28 (and not § 270.29), and also corrects the spelling of ''cannot.''

EPA is proposing to revise § 270.51(a)(1) to clarify that the demonstration of technical requirements is also included within the existing requirement for a timely application in order for the facility to continue to operate under an expired permit. Specifically, EPA is proposing to state that the permittee includes the ''information necessary to assess whether the permittee is in compliance with all applicable RCRA technical requirements of parts 260, 261, 264, 266, 267, 268, and 270 which are required for a complete application (under § 270.10).'' As stated above regarding similar revisions to identify the CFR Parts, EPA aims to minimize misunderstandings about permit application requirements that could complicate the permitting process, thereby improving clarity and facilitating a more efficient permit application process. This provision is also amended by a proposed technical correction, described in section V.B.1., which states that the contents of Part B of the RCRA application are in §§ 270.14 through 270.28 (and not § 270.29).

EPA requests comment on these proposed revisions in §§ 124.3(a)(2), 270.1(a)(3), 270.2, 270.10(c), 270.10(d), 270.14(a), and 270.51(a)(1). (Reference comment code ''PA–1a.'')

b. Permit Application Submittal Timeframe

EPA proposes to revise § 270.10(h) to clarify that the permit renewal application is not optional for a permit renewal (as required). EPA is proposing to revise § 270.10(h)(1)–(2) to explicitly require applicants to submit applications for permit renewal no later than 180 days prior to the expiration date of the existing effective permit, or an alternate date as allowed by the permitting authority. Section 270.10(h)(1)–(2) currently states that facility owners or operators ''may'' submit a new application at least 180 days before the permit's expiration date. EPA finds that the use of ''may'' in the sentence implies that submitting a renewal application at least 180 days before permit expiration is optional. It is not optional, but was worded as such since the Director can adjust the timeframe. Submissions of permit applications less than 180 days before permit expiration typically does not allow permitting authorities sufficient time to process renewals before the scheduled permit expiration date.

EPA is including flexibility in the proposed revisions to § 270.10(h)(1)–(2) that would allow EPA and authorized states to require or allow submission on an alternate date. EPA expects this revision would enable the permitting authority to require the submittal of permit applications earlier than 180 days before the permit expiration date (this is already a common practice in many states). The earlier review time will increase the likelihood of permit issuance occurring on the permit expiration date and thus reduce the need to administratively continue a permit.

The proposed alternate date (either prior to or after the 180 days before the expiration date) will also enable the Director to allow a later date if circumstances necessitate an abbreviated submission time. EPA anticipates that such circumstances will be rare, occurring only in exceptional cases.

A formatting revision (italicizing the paragraph title) to be consistent with the other related paragraphs is also proposed.

EPA requests comment on these revisions (reference comment code ''PA–1b'').

2. Preparedness and Prevention, Contingency Plan and Emergency Procedures

EPA is proposing several amendments with respect to preparedness and prevention and contingency planning for TSDFs. Specifically, EPA is proposing amendments under the following areas:

- Storage of preparedness and prevention equipment
- Clarification of meaning of ''immediate access''
- Clarifications for preparedness, prevention, and emergency procedures
- Contingency plan

Many of these amendments are consistent with the amendments EPA made to contingency plan requirements for hazardous waste generators in the 2016 Generators Improvement Rule.[6] Where applicable, EPA is also proposing amendments for large quantity generators (LQGs) to be consistent with proposed amendments for TSDFs.

a. Storage of Preparedness and Prevention Equipment

EPA is proposing to modify §§ 264.32 and 265.32 (Required equipment) to incorporate flexibility to store preparedness and prevention equipment in other areas of the facility in situations where it is infeasible or inappropriate for safety reasons to have the equipment located immediately next to hazardous waste treatment, storage, and disposal areas. ''Required equipment'' includes an internal communications or alarm system; a device, such as a telephone or two-way radio; portable fire extinguishers, fire control, spill control, and decontamination equipment; and water at adequate volume and pressure.

In the preamble to the Hazardous Waste Generator Improvements Rule (81 FR 85732, November 28, 2016), EPA noted that existing regulations associated with preparedness and prevention were unclear regarding whether the required equipment must be placed in those areas where hazardous waste is generated or accumulated, or other parts of the facility where hazardous waste is not being managed. EPA stated that it may not always be appropriate or safe to store equipment in the actual waste management area even though the equipment requirements in part 262 apply only to the generation, accumulation, and (if relevant) generator treatment of hazardous waste. Therefore, EPA concluded the generator should have the flexibility to store this equipment in other areas of the facility in situations where it is infeasible or inappropriate for safety reasons to have the equipment located immediately next to hazardous waste generation or accumulation.

In this rule, EPA is applying analogous logic to the hazardous waste treatment, storage, and disposal regulations in §§ 264.32 and 265.32. EPA is proposing to clarify that, while the equipment provisions under parts 264 and 265 apply to only those areas where hazardous waste is either being treated, stored, or disposed of, the facility owner or operator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies. This proposed amendment is consistent with

[6] 81 FR 85732, November 28, 2016. *Hazardous Waste Generator Improvements Rule;* Final Rule.

regulatory language that currently applies to small quantity generators (SQGs) and LQGs in §§ 262.16(b)(8)(ii) and 262.252, respectively. EPA requests public comment on this proposed amendment (reference comment code ''PP–2a'').

b. Clarify the Meaning of ''Immediate Access''

EPA is proposing to modify §§ 264.34(a)–(b) and 265.34(a)–(b) (Access to communications or alarm system) to clarify the meaning of ''immediate access.''

The preparedness and prevention provisions in §§ 264.34 and 265.34 include the condition that, whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required. These provisions are almost identical to the preparedness and prevention provisions in § 262.254, which EPA amended in the Hazardous Waste Generator Improvements Rule (81 FR 85732, November 28, 2016), to include the parenthetical ''(*e.g.,* direct or unimpeded access)'' after the phrase ''immediate access'' to clarify its meaning in that rulemaking. Similarly, EPA is proposing to add the same parenthetical amendment after the phrase ''immediate access'' in §§ 264.34 and 265.34 to achieve similar clarification for the meaning of this same phrase. EPA requests public comment on this proposed amendment (reference comment code ''PP–2b'').

c. Clarifications for Preparedness, Prevention, and Emergency Procedures

EPA is proposing several amendments to modify §§ 264.37 and 265.37 (Arrangements with local authorities), as related to preparedness, prevention, and emergency procedures in 40 CFR parts 264 and 265. These amendments aim to align with language currently applicable to LQGs in § 262.256(a)–(b), as amended in the 2016 Generator Improvements Rule (81 FR 85732, November 28, 2016). The proposed amendments include: (1) allowing owners and operators of facilities to make and document arrangements with the Local Emergency Planning Committee (LEPC), when appropriate; (2) clarifying that owners or operators must document arrangements with organizations or local authorities necessary to respond to an emergency and, in cases where no arrangements exist, they must document that attempts to make arrangements were made; and (3) implementing other amendments that improve organization and readability of the provision.

When § 262.256 was amended in the Hazardous Waste Generator Improvements Rule (81 FR 85732, November 28, 2016), EPA recognized the need to update the requirements associated with emergency planning and notification, as related to preparedness, prevention and emergency procedures for small and LQGs. The amendments were necessary to reflect developments in the national, state and local infrastructure for emergency planning and response, including the passage of the Emergency Planning and Community Right-To-Know Act (EPCRA) in 1986 and the roles and responsibilities of LEPCs under EPCRA.

EPA also acknowledged that documentation regarding attempts to make arrangements with the local fire department, as well as any other organization necessary to respond to an emergency, would be beneficial in ensuring that necessary steps to prepare for an emergency are taken. Therefore, EPA clarified that generators must document either the attempts or, if successful, the final arrangements.

EPA is proposing to make conforming amendments to the standards for hazardous waste TSDFs in parts 264 and 265. EPA requests public comment on the proposed amendments to §§ 264/265.37(a), 264/265.37(a)(1)–(3), and 264/265.37(b). (Reference comment code ''PP–2c.'')

d. Contingency Plan

EPA is proposing several amendments associated with contingency plan requirements included in §§ 264.52 and 265.52 (Content of contingency plan) and §§ 264.53 and 265.53 (Copies of contingency plan).

First, EPA is proposing amendments to §§ 264.52(c) and 265.52(c) to improve clarity and, as described above, include arrangements with an LEPC, when appropriate. EPA's proposed language in this section is consistent with requirements currently applicable for LQGs in § 262.261(c).

Second, the Agency is proposing amendments to §§ 264.52(d) and 265.52(d) to allow owners or operators the flexibility to eliminate unnecessary employee personal information in the contingency plan in order to protect those individuals' privacy while still providing necessary information to address emergencies. Specifically, while retaining the name of persons qualified to act as emergency coordinators, the Agency is proposing to remove references to addresses and change the reference to home and office telephone numbers to ''emergency telephone number.'' EPA's proposed amendments in this section are consistent with requirements currently applicable to LQGs in § 262.261(d).

Third, EPA is proposing to add language to §§ 264.52(d) and 265.52(d) stating that, in situations where the facility has an emergency coordinator continuously on duty because it operates 24 hours a day, every day of the year, the plan may list the staffed position (*e.g.,* operations manager, shift coordinator, shift operations supervisor, or similar position). Additionally, the plan must include an emergency telephone number that can be guaranteed to be answered at all times. EPA's proposed amendments in this section are consistent with requirements currently applicable to LQGs in § 262.261(d).

Fourth, EPA is proposing to amend §§ 264.53 and 265.53 to require the physical copy of the contingency plan at the facility to be stored away from fire and explosive hazards. EPA is also proposing a conforming amendment to § 262.262 to apply this revision to LQGs.

Lastly, EPA is proposing to amend §§ 264.53 and 265.53 to clarify the flexibility for submitting electronic copies of the contingency plan to all local emergency responders. This amendment encourages the use of electronic formats while allowing the decision on format to be made on a facility-by-facility basis. EPA is also proposing a conforming amendment to § 262.262 to apply this revision to LQGs.

EPA is requesting public comment on these proposed amendments, specifically at §§ 264.52(c)–(d); 264.53 introductory text, 264.53(a); 265.52(c)–(d); 265.53 introductory text, 265.53(a); and conforming amendments at §§ 262.262(a), 262.262(c), and the addition of 262.262(d). (Reference comment code ''PP–2d'').

3. Financial Assurance

EPA is proposing several technical updates to the RCRA financial assurance standards. The RCRA closure and post-closure care requirements are designed to protect human health and the environment from the long-term threats associated with hazardous waste management and permanent disposal. Many of these detailed unit and facility requirements apply at the end of a facility's waste management operations and can be very expensive. To prevent a facility from ceasing operations and failing to provide for the potentially costly closure and post-closure care requirements, EPA promulgated

regulations requiring TSDFs to demonstrate that they have the financial resources to properly conduct closure and post-closure in a manner that protects human health and the environment. The TSDF general facility standards include precautions to prepare a facility for accidents, spills, and any resulting emergency responses. Such unexpected events could damage third parties by impacting human health or property outside the facility. In order to compensate third parties for injury or damage that might result from such events, the RCRA regulations require TSDF owners and operators to demonstrate that they have the financial resources to pay for bodily injury or property damage that might result from unexpected events during waste management (known as the third-party liability requirements).

Since the financial assurance requirements came into effect, commercial and financial practice and standards have evolved. EPA has provided technical updates via guidance and memo to account for these changing practices and standards, while the regulations have largely remained unchanged. EPA is proposing to codify some of these technical updates in the regulations to better account for the evolution of commercial and financial practices over the past several decades. EPA expects these codifications will reduce confusion for program implementers, and owners and operators as the regulations will better align with contemporary commercial practice.

EPA is proposing the following changes:

- Replacing the requirement for a ''negative assurance'' in the financial test
- Clarifying acceptable financial test bond ratings
- Clarifying appropriate inflation factors for closure cost estimates
- Adding limited liability corporations as an accepted organizational structure
- Updating the governing rules for standby letters of credit

a. Replace the Requirement for a ''Negative Assurance'' in the Financial Test

EPA is proposing to remove the requirement for a ''negative assurance'' to be included in the accountant's report requirement for financial tests in §§ 264.143(f)(3)(iii), 264.145(f)(3)(iii), 264.147(f)(3)(iii), 265.143(e)(3)(iii), 265.145(e)(3)(iii), and 265.147(f)(3)(iii), and replace it with a standard that conforms with current accounting standards. This proposed change would impact several regulatory provisions related to the financial test.

In using the financial test or corporate guarantee in the current regulations in subpart H of parts 264 or 265, the owner or operator must submit to the EPA Regional Administrator: (1) a letter signed by the owner's or operator's chief financial officer (CFO) using the language specified in 40 CFR 264.151 to report financial information and test results, (2) a copy of the independent certified public accountant (CPA) report on the examination of the owner's or operator's financial statements for the latest completed fiscal year, and (3) A special report from the owner's or operator's independent CPA to the owner or operator. The CPA's special report presents the procedures performed and findings based on the CPA's comparison of the data which the chief financial officer's letter specifies as coming from the independently audited year-end financial report with the amounts in the audited financial statements. The regulations also require the CPA's report to state that ''[i]n connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted'' (see, for example, § 264.143(f)(3)(iii)(B)). This is referred to by the auditing profession as a ''negative assurance.''

The CFO's letter must discuss any adjustments made in the data to report the results of the financial test that differ from the amounts in the audited financial statements. The purpose of the CPA's special report on the CFO's letter is to ensure that information provided in the financial test is consistent with information in the firm's audited financial statements. This is particularly important when information cannot be checked directly against the financial report because of adjustments by the CFO.

In performing audits and other types of work, CPAs must follow certain professional standards. The American Institute of Certified Public Accountants, Inc.'s (AICPA's) Statement on Auditing Standards no longer permits independent auditors to express ''negative assurance'' (*i.e.,* ''no matter came to his attention which caused him to believe that the specified data should be adjusted''). The new professional standards require the auditor to present the results of procedures performed in the form of findings and explicitly disallow issuing ''negative assurance.'' This has left many accountants, corporations and states uncertain how to fulfill the RCRA regulatory requirement for using the financial test at, for example, § 264.143(f)(3)(iii)(B).

The Agency is proposing to change the RCRA regulations to remove the requirement for a ''negative assurance'' in the CPA's special report for financial tests in §§ 264.143(f)(3)(iii)(B) (financial assurance for closure), 264.145(f)(3)(iii)(B) (financial assurance for post-closure care), 264.147(f)(3)(iii)(B) (third-party liability), and the analogous interim status regulations (§§ 265.143(e)(3)(iii)(B) (financial assurance for closure), 265.145(e)(3)(iii)(B) (financial assurance for post-closure care), and 265.147(f)(3)(iii)(B) (third-party liability)). EPA is proposing to replace the regulatory language requiring a ''negative assurance'' with a standard that conforms with current accounting standards. Specifically, instead of a ''negative assurance'' requirement, EPA is proposing to require the special report from the owner's or operator's independent CPA include a description of the procedures performed and related findings, including whether or not there were discrepancies found in the comparison. In an agreed-upon procedures engagement, an accountant is engaged by a client to issue a report of findings based on specific procedures performed on the specific items of a financial statement. For example, under the new regulations, EPA would accept a CPA's report describing the procedures performed and related findings, including whether or not there were discrepancies found in the comparison, based on an agreed-upon procedures engagement performed in accordance with AICPA's Statement on Standards for Auditing Engagements No.19, Agreed-Upon Procedures Engagements (or any superseding requirements developed by the AICPA).

In practice, the Agency has been accepting Agreed-Upon Procedure Engagements since 1997. This change is intended only to update the regulations to conform with existing practice both in the accounting industry and EPA's hazardous waste financial assurance program.

EPA is requesting comment on this proposed change (in §§ 264.143(f)(3)(iii), 264.143(f)(3)(iii)(A)–(B), 264.145(f)(3)(iii), 264.145(f)(3)(iii)(A)–(B), 264.147(f)(3)(iii), 264.147(f)(3)(iii)(A)–(B), 265.143(e)(3)(iii), 265.143(e)(3)(iii)(A)–(B), 265.145(e)(3)(iii), 265.145(e)(3)(iii)(A)–(B), 265.147(f)(3)(iii), and 265.147(f)(3)(iii)(A)–(B)). (Reference comment code ''FA–3a.'')

b. Clarifying Acceptable Financial Test Bond Ratings

EPA is proposing a change to the financial test regulations to clarify the appropriate treatment of bond rating suffixes in determining whether or not a firm passes the financial test. Specifically, EPA is clarifying that in order to pass alternative II of the financial test, a firm must have a current rating for its most recent bond issuance by Standard and Poor's of BBB—or better or a Moody's rating of Baa3 or better. This proposed change would amend §§ 264.143(f)(1)(ii)(A), 264.145(f)(1)(ii)(A), 264.147(f)(1)(ii)(A), 265.143(e)(1)(ii)(A), 265.145(e)(1)(ii)(A), and 265.147(f)(1)(ii)(A).

The current parts 264 and 265, subpart H financial test regulations, relating to the bond rating alternative of the financial test, specify that the owner or operator must have a bond rating ''of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's.'' At the time these regulations were promulgated, S&P had not yet begun the practice of adding a ''+'' or ''−'' suffix to bond ratings, and Moody's had not yet begun adding a ''1,'' ''2,'' or ''3'' suffix. The bond rating suffix indicates the relative standing of a bond within a major rating category. In other words, a BBB—bond has a lower relative standing than a BBB bond or a BBB+ bond, but all three bonds fall within the major rating category of BBB bonds. The BBB—bond would have been rated as a BBB bond prior to the time when S&P began adding a rating suffix. Similarly, a bond rated Baa3 by Moody's would have been rated Baa prior to the time when Moody's began adding the rating suffix. In summary, pursuant to current regulations, a Moody's rating of Baa3 or better, or a S&P rating of BBB—or better satisfies the legal requirements of the financial test. EPA has been accepting ratings from Moody's of Baa3 or better and S&P ratings of BBB—or better since the two National Recognized Statistical Ratings Organizations (NRSROs) added the suffixes. This proposed regulatory change simply updates the regulations to reflect current nomenclature and practice.

EPA is requesting comment on this proposed change (reference comment code ''FA–3b'').

c. Clarify Appropriate Inflation Factors for Closure and Post-Closure Cost Estimates

EPA is proposing to clarify language in §§ 264.142(b), 264.144(b), 265.142(b), and 265.144(b) that describes the inflation factor that should be used for annual adjustment of the closure and post-closure cost estimates. The existing regulations provide instructions on how to adjust closure cost estimates on an annual basis through one of two methods; either recalculating the maximum costs of closure or post-closure care cost estimate in current dollars, or using an inflation factor to bring the estimate into current dollars. This inflation factor is derived from the Implicit Price Deflator (IDP) for Gross National Product (GNP) published by the U.S. Department of Commerce in its Survey of Current Business. The method of using the inflation factor to adjust the closure and post-closure cost estimates is employed by the majority of facilities that have RCRA financial assurance requirements.

The Deflator is a statistical series that measures inflation in the economy. Since the RCRA Subtitle C financial assurance regulations were promulgated, the Gross National Product Deflator has largely been supplanted by the Gross Domestic Product Deflator. When financial assurance regulations were originally promulgated, the Department of Commerce used GNP figures to calculate the IPD, but in recent years has favored Gross Domestic Product (GDP) as a basis for the IPD because the data better represent national output. The IDP based on GDP produces similar results to the IPD based on GNP; however, the IDP based on GDP is available to owners/operators two months before the IDP based on GNP. The IDP based on GDP was not available at the time this regulation was issued. In EPA's March 8, 1996, memorandum, EPA stated that the Gross Domestic Product was appropriate to use to calculate the inflation factor.[7]

EPA is proposing to codify allowance of the IPD based on either GNP or GDP, with the requirement that the owner/operator must use only that type for all cost estimates and adjustments, since each deflator is based on different data. An owner/operator may choose to switch deflators, but must adjust previous cost estimates accordingly.

EPA is requesting comment on this proposed change (reference comment code ''FA–3c'').

d. Adding Limited Liability Corporations as an Accepted Organizational Structure

EPA is proposing to add limited liability corporation (or LLC) as an option for organizational structure of an owner or operator in instrument language where the organization structure is required.

The mechanisms for demonstrating financial assurance under RCRA described and specified at § 264.151 include some prompts and instructions for completing blank fields in the mechanism text. In those cases, the instructions in brackets are to be replaced with the relevant information and the brackets deleted. One example is that some of the mechanisms require the organizational structure of the owner or operator (*e.g.,* corporation, partnership) to be specified. Specifically, the trust fund for closure and post-closure care, the trust fund for liability coverage, and the payment and performance bonds for closure and post-closure care require this information. For these mechanisms, the bracketed instructions include several options of organization structure. EPA is today proposing to add ''limited liability company'' to the options for organizational structure that may be specified in the instrument language.

Some owners and operators of hazardous waste facilities are limited liability companies. The absence of ''limited liability company'' as an option for the owner or operator's organizational structure has raised implementation questions and generated some confusion. The omission of limited liability company as an option was not intentional and should not and does not prevent limited liability companies from demonstrating financial assurance. The omission likely simply reflects the fact that limited liability companies were not as common in the late 1970s and early 1980s when the instrument language was first developed. EPA believes adding this will reduce implementation questions going forward. Specifically, EPA is proposing to amend §§ 264.151(a)(1), 264.151(b), 264.151(c), and 264.151(m)(1) to add limited liability company as an organizational structure for the owner or operator, and to make a minor editorial capitalization correction. EPA is requesting comment on this proposed change (reference comment code ''FA–3d'').

e. Governing Rules for Standby Letters of Credit

EPA is proposing to add International Standby Practices (ISP98, or subsequent updates) as an option for the governing rules for standby letters of credit at §§ 264.151(d) and (k).

The required wording for standby letters of credit at §§ 264.151(d) and (k) to include a specification of the set of

[7] US EPA memorandum from the Office of Solid Waste to Addressees on *New Inflation Factors for Updating Financial Responsibility Cost Estimates.* (March 1996). Available at: *https://rcrapublic.epa.gov/files/11981.pdf.*

governing rules to which the standby letter of credit will be subject. At present, the regulations allow the choice between the most recent edition of the Uniform Customs and Practice (UCP) for Documentary Credits, published and copyrighted by the International Chamber of Commerce, or the Uniform Commercial Code (U.C.C.). The bodies of rules and standards provide ''default'' provisions when the parties involved in the production of the letter of credit have neglected to include them. Since the required RCRA closure, post-closure, and third-party liability letter of credit wording addresses the major key points, EPA expects the choice of governing rules provision to not have a major impact on the functioning of the mechanism or the program.

Nonetheless, letters of credit can seem to be subject to ''a bewildering array of rules and laws.'' [8] Since the promulgation of this required wording, other sets of governing rules have been developed. Namely, International Standby Practices published by the International Chamber of Commerce has emerged and appears to be the regime of choice for some major banks—in particular for the issuance of standby letters of credit.[9] Adding International Standby Practices as an option for issuers of letters of credit to select should help keep EPA's regulations consistent with contemporary commercial practice. Maintaining consistency with commercial practice is important, lest financial institutions become discouraged from participating in the market for RCRA closure and post-closure care letters of credit.

EPA has previously conducted a review of literature related to these choices of governing rules, which did not identify one as superior to the others.[10] The International Standby Practices actually emerged from a recognition of the necessity for specific rules of practice for standby letters of credit. For example, the International Chamber of Commerce observed that ''[a] new set of Rules was required for this workhorse of commerce and finance, which, in terms of value, exceeds commercial credits by a ratio of 5: 1.[11] In 1998, the International Chamber of Commerce published a separate set of governing rules especially for standby letters of credit. The International Standby Practices (''ISP98'') rules were written primarily by the Institute of International Banking Law and Practice and endorsed by the International Chamber of Commerce. Since the RCRA closure and post-closure letters of credit resemble standby letters of credit, the International Standby Practices 98 rules should operate effectively as governing rules. EPA does not foresee this change impacting how letters of credit function in the program or the level of assurance provided by the letters of credit.

Today, EPA is revising the regulations at §§ 264.151(d) and (k) to the most recent edition of the International Standby Practices as published and copyrighted by the International Chamber of Commerce as an option for the set of governing rules to which the standby letter of credit will be subject. This change is being proposed by EPA as a means to help keep the regulations consistent with commercial practice, rules and standards.

EPA is requesting comment on these proposed revisions (reference comment code ''FA–3e'').

4. RCRA Organic Air Emission Standards

EPA is proposing two updates related to the RCRA Organic Air Emission Standards in 40 CFR parts 264 and 265, subparts BB and CC to clarify certain provisions. Specifically, EPA is proposing amendments under the following areas:

- Clarification of waste analysis plan applicability for LQGs
- Instances where use of Method 21 is not required

a. Clarification of Waste Analysis Plan Applicability for Large Quantity Generators

EPA is proposing to add language to §§ 264.1063(d) and 265.1063(d) (Test methods and procedures in subpart BB—Air Emission Standards for Equipment Leaks) to reflect the standard in § 268.7(a)(5).

Under § 262.17(a)(1)(i) (Conditions for exemption for a large quantity generator that accumulates hazardous waste), LQGs must comply with the ''applicable'' RCRA air requirements of subparts AA, BB, and CC of 40 CFR part 264 and part 265, including air emission standards for equipment leaks in subpart BB. Section 264.1063(d) of subpart BB states: ''In accordance with the waste analysis plan required by § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentrations that equals or exceeds 10 percent by weight. . . .'' However, this language does not reflect that LQGs are not required to develop a waste analysis plan unless they are treating waste to meet the land disposal restriction treatment standards established in § 268.7(a)(5).

Section 268.7(a)(5) currently specifies: ''If a generator is managing and treating prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under 40 CFR 262.15, 262.16, and 262.17 to meet applicable LDR treatment standards found at § 268.40, the generator must develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of table 1 to § 268.45, however, are not subject to these waste analysis requirements.)'' Therefore, while some LQGs must determine organic concentrations by following one of the options prescribed in §§ 264.1063(d) or 265.1063(d), they are not required to document this determination in a waste analysis plan unless they are treating waste to meet specific LDR treatment standards.

EPA is proposing to amend §§ 264.1063(d) and 265.1063(d) to reflect how the test methods and procedures requirements for determining organics concentration apply to LQGs that are not required to develop a waste analysis plan. EPA believes these amendments will improve understanding and compliance with the regulations.

EPA requests public comment on this proposed change (reference comment code ''RO–4a'').

b. Instances Where Use of Method 21 Is Not Required

EPA is proposing to add language to the definition of ''no detectable organic emissions'' used in § 265.1081 (Definitions in subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers) to clarify that Method 21 is not always required in subpart CC. Specifically,

[8] C. Pealer, ''*Use of Standby Letters of Credit in Public and Affordable Housing Projects*'' (2014).

[9] Standby letters of credit are issued by financial institutions and guarantee payment to a beneficiary if the institution's client fails to fulfill an obligation. RCRA closure and post-closure letters of credit operate similarly to a standby letter of credit in that the regulator may draw upon the credit after a determination that the owner or operator failed to perform. See, for example, 264.143(d)(8).

[10] US EPA *CERCLA 108(b) Instrument Specification Background Document.* (2016). Available at *https://www.regulations.gov* (document ID: EPA–HQ–SFUND–2015–0781–0503).

[11] Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, ''International Standby Practices (ISP98): Report of the Secretary General. (2000). Available at: *https://docs.un.org/en/A/CN.9/477#:~:text=The%20International%20Standby%20Practices%20(ISP98)%20reflects%20generally,and%20usage%20of%20standby%20letters%20of%20credit.*

Method 21 is not required when a spring-loaded pressure relief device, conservation vent or similar type of pressure relief device operates with no detectable emissions when in the closed position.

The current definition in § 265.1081 states that ''no detectable organic emissions'' means ''no escape of organics to the atmosphere as determined using the procedure specified in § 265.1084(d) of this subpart.'' Section 265.1084(d) requires use of Method 21. However, the definition does not currently reflect that Method 21 is not required for a spring-loaded pressure-vacuum relief valve, conservation vent or similar type of pressure relief device to operate with no detectable organic emissions. Therefore, EPA is proposing to amend the definition by adding the text ''unless that procedure is not specifically required'' after ''no escape of organics to the atmosphere as determined using the procedure specified in § 265.1084(d) of this subpart.'' This amendment would ensure that the procedure specified in § 265.1084(d) (Method 21) is only required as applicable under the subpart CC regulations.

EPA notes that, where Method 21 is not required by subpart CC, the owner or operator must still ensure the device operates with no detectable organic emissions when secured in the closed position (*e.g.,* §§ 264.1084(c)(3)(ii), 264.1086(c)(3)(iv), and 264.1086(d)(3)(iv)). This proposed clarification reflects the Agency's position issued in a memorandum from EPA's Office of Resource Conservation and Recovery on December 21, 2021,[12] that stated that:

> ''Under Subpart BB, owners and operators of facilities must monitor via Method 21 a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device or safety device in gas/vapor service within five calendar days of a pressure release to confirm the device has returned to a condition of no detectable emissions [. . .] In contrast, under Subpart CC, the owner or operator must visually inspect (*e.g.,* visual monitoring for gaps, holes, cracks) the closure devices associated with Level 1 emission controls for tanks and containers at least once a year, and first efforts to repair must occur within five calendar days and generally must be completed within 45 calendar days.''

EPA also notes that authorized states may be more stringent. In addition, permit writers may use RCRA's omnibus authority to require Method 21 monitoring if it is determined that such a permit condition is necessary, at that specific facility, to protect human health and the environment. EPA and state inspectors may also use Method 21 to test for suspected leaks.

EPA requests public comments on these proposed changes (reference comment code ''RO–4b'').

5. General Language Clarification

Proposed revisions under this category consist of clarification of definitions and updates of word usage to ensure consistency with previous regulatory revisions.

a. Facility Definition

EPA is proposing to update the ''Facility'' definition in § 260.10 by replacing the term ''operational units,'' which is usually associated with CERCLA, with ''hazardous waste management units,'' a term associated with RCRA, and which is defined in § 260.10. The RCRA hazardous waste regulations do not have a definition for operational units and rarely make use of the term, except within the facility definition at § 260.10, and a few mentions in part 270. This could lead to some ambiguity as to which types of sites are brought under the definition of facility. In contrast, hazardous waste management unit is a defined and widely used term in the RCRA regulations and unlike operational units, its definition accounts for post-closure facilities. EPA believes this proposed revision will improve the intended meaning of the definition, as well as provide increased clarity.

EPA requests comment on this proposed definition (reference comment code ''GL–5a'').

b. Qualified Professional Engineer

EPA is proposing to revise and replace several regulations in §§ 267 (Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit) that use outdated terminology relating to professional engineer with the term ''qualified professional engineer'' to be consistent with the term finalized in the Resource Conservation and Recovery Act Burden Reduction Initiative (71 FR 16862, April 4, 2006).

EPA is proposing to replace several variations with ''qualified professional engineer'' that were used in the Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities final rule (70 FR 53419, September 8, 2005). That standardized permit rule used at least three different terms that EPA is proposing to be replaced by ''qualified professional engineer'':

- ''Independent registered professional engineer'' used in §§ 267.117, 267.143(j), and 267.147(e)
- ''Independent qualified registered professional engineer'' used in §§ 267.191, 267.192(a), 267.200(f), and 270.305(a)
- ''Qualified registered professional engineer'' used in §§ 267.1101(h) and 267.1106(c).

The ''qualified professional engineer'' terminology was finalized in the Resource Conservation and Recovery Act Burden Reduction Initiative (71 FR 16862, April 4, 2006) and used throughout the part 264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and part 270 EPA Administered Permit Programs: The Hazardous Waste Permit Program. However, it was EPA's oversight not to use the term in the part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit and in § 270.305(a) as that provision was a new addition in the 2005 standardized permit rule (70 FR 53419, September 8, 2005). Refer to 71 FR 16862 pages 16868–16870 for the preamble discussion and rationale for removing 'independent' and 'registered' in some of the engineer descriptions.

EPA requests comment on these proposed changes (reference comment code ''GL–5b'').

c. Overview of the RCRA Permit Program

EPA is proposing to revise and update the ''Overview of the RCRA Permit Program'' in § 270.1(b). Many aspects of this provision are outdated. For example, § 270.1(b) refers to superseded requirements for units prior to the 1980s, prior form names, and old terminology. EPA is proposing to update § 270.1(b) to: improve the description of the applicability of the requirement to file a notification of hazardous waste activity for existing or newly identified waste under part 261 and add the applicability to newly regulated activities identified in other promulgated parts; update form names; clarify the prohibition on hazardous waste treatment, storage, or disposal unless conducted in accordance with the applicable requirements; clarify interim status applicability; refer to the definitions in § 270.2 for the terms ''existing hazardous waste management (HWM) facility'' and ''new HWM facility'' (based on status as of November 19, 1980); and clarify permit application requirements (Part A and Part B). EPA is also proposing to reorganize this provision.

[12] *Subpart BB versus Subpart CC.* (December 2021). Available at: *https://rcrapublic.epa.gov/files/14940.pdf.*

EPA is requesting comment on these proposed changes (reference comment code ''GL–5c'').

6. Permit Modification

Through program management and oversight, EPA has heard from state programs and regulated entities that improvements to the RCRA permit modifications process are needed to increase efficiency and allow hazardous waste facilities to more rapidly address changes in business operations, technology, or other changes, such as to respond to new waste streams that need to be stored and managed.

To improve the permit modifications process, EPA is proposing the following technical updates:

- Clarify that continued permits can be modified and that renewals can include changes (that would otherwise be modifications); and
- Update the regulations for notice of modification requests to (1) align the regulatory language with related proposed changes to notifications using the mailing lists and (2) correct errors in citations.

These changes are discussed in more detail immediately below.

a. Modifications for Continued Permits and Reissuances

EPA is proposing to amend § 270.51 (Continuation of expiring permits) to add a new paragraph at § 270.51(f) to clarify that permits continued after expiration (meaning, permits that are administratively continued until the permit is reissued) can be modified under §§ 270.41 and 270.42. The proposed paragraph at § 270.51(f) also clarifies that changes can be incorporated in the permit reissuance (renewal) that would otherwise constitute permit modification under §§ 270.41 and 270.42.

While EPA promotes permit reissuance by the expiration date, it is not uncommon for a permit to be continued (per § 270.51) until the permit is reissued. EPA acknowledges that urgent changes, such as transfer of ownership, may require more timely permitting action and that the permit modification process may be a more expedient option than the pending reissuance, given the time needed for the permitting agency to review an entire permit application and process a permit renewal. In addition, facilities may experience permit renewal delays while the permitting agency resolves legal matters while processing permit modifications. Although the existing regulations do not preclude the permitting agency from modifying an administratively continued permit (and such modifications are standard practice in many states), EPA believes that a clarification would improve the understanding and application of the regulations.

EPA is also proposing to clarify in the new paragraph at § 270.51(f) that the permitting agency may include changes in the permit renewal that would otherwise qualify for a permit modification. This is an existing practice that is alluded to in 40 CFR part 124, subpart B, ''Specific Procedures Applicable to RCRA Permits,'' in § 124.31(a). The section states: ''. . .The requirements of this section shall also apply to RCRA Part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations.'' For the purposes of this section, a ''significant change'' is any change that would qualify as a Class 3 modification under §§ 270.42.

EPA requests public comment on these proposed changes (reference comment code ''PM–6a'').

b. Notification of Modification Requests

EPA is proposing two revisions to the regulations governing permit modification requests at §§ 270.42(a)(1)(ii), 270.42(b)(2), and 270.42(c)(2) to improve consistency across the Class 1, Class 2, and Class 3 permit modification request requirements.

First, EPA is proposing to revise the mailing list notice language to indicate that the facility mailing list notice may be provided ''by postal or electronic mail.'' This proposed revision is intended to promote consistency across the three classes of permit modification requests. For further discussion of the rationale for this proposed change, see section V.A.7.b., Modernizing Public Notice.

Second, EPA is proposing to revise these provisions to cite § 124.10(c)(1). The current cross-reference omits paragraph ''(1),'' and in all cases it should clearly indicate that notice must be provided to the other groups in addition to ''persons on a mailing list,'' consistent with § 124.10(c)(1)(ix).[13]

EPA is also proposing similar revisions at §§ 270.42(b)(6)(iv)(A), 270.42(e)(2)(iii), and 270.42(f)(1) to reference the mailing list definition and to clarify that electronic mail can satisfy the notification requirement for permit modification requests.

EPA is requesting comment on whether the phrase ''postal or electronic mail'' would be overly restrictive for future use and, if so, what terminology would best capture the intended scope. In particular, EPA requests comment on whether alternative terms such as ''electronic formats'' or ''electronic messages'' would offer greater flexibility to better accommodate future electronic communication methods. For example, the term ''electronic messages'' [14] is inclusive and encompasses electronic mail.

EPA requests comment on these proposed changes (at §§ 270.42(a)(1)(ii), 270.42(b)(2), 270.42(b)(6)(iv)(A), 270.42(c)(2), 270.42(e)(2)(iii), and 270.42(f)(1)). (Reference comment code ''PM–6b.'')

7. Modernizing Public Notice

EPA is proposing technical revisions to modernize public notice requirements for RCRA permitting by allowing or clarifying, as appropriate, the use of alternative methods, particularly electronic alternatives, in the following areas:

- Newspaper notice requirements,
- Mailing lists and notices to the mailing list, and
- In-person hearings and meetings.

This proposal responds to requests to recognize and clarify the use of electronic alternatives in order to improve the effectiveness and efficiency of the permitting process, reduce burden, and reflect current communication practices. These proposed changes also reflect the Agency's position and the majority of public comments received by EPA in response to the December 2021 **Federal Register** document titled ''Modernizing Public Notice for RCRA Hazardous Waste Permitting and Other Actions'' (86 FR 71482, December 16, 2021).

Importantly, with respect to the terms ''newspaper'' and ''mail,'' and with respect to the flexibility available for meetings and public hearings, EPA considers the regulatory changes proposed today to constitute clarifications of the flexibility available under the existing part 124 regulations that pertain to RCRA Subtitle C. Following EPA's December 2021 document, and in light of the comments received in response to that document, EPA is taking the opportunity to propose clarifying these points in the Subtitle C permitting regulations, so as to ensure that both regulators and the regulated community are fully aware of the available flexibility. These

[13] See related technical corrections that restore the order for § 124.10(c)(1)(vi)–(xi).

[14] This term was codified for recordkeeping and disclosure purposes (44 U.S.C. 2209(c)(2)) as follows: ''The term ''electronic messages'' means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.''

clarifications should not be construed as bearing on the interpretation of the same terms as used elsewhere in the regulations.

In its December 2021 **Federal Register** document, EPA stated that it interprets RCRA section 7004(b)(2), which requires newspaper notice of the Agency's intent to issue a RCRA Subtitle C permit, as allowing notice in qualifying online newspapers. EPA also requested public comment in the December 2021 document on whether online mechanisms that may not typically be considered newspapers, such as bulletins or newsletters published online by state environmental authorities, could also satisfy section 7004(b)(2) and its implementing regulations.

Overall, EPA intends to provide the full range of flexibility allowed by RCRA and the Agency's regulations to satisfy the public notice requirements and emphasizes that permitting authorities can ultimately choose which public notice mechanisms would be most effective among the methods authorized by statute and regulation, based on the characteristics of the individual community. In addition, when notice is required by newspaper and radio, the Director is encouraged to use additional methods to ensure that public notice effectively informs all interested communities, and since print newspaper and radio are not always locally available or effective in all communities, additional methods may be needed. EPA also notes that public participation plans [15] developed by permitting authorities should identify the best and most efficient methods to deliver the public notice for a given community (within the regulatory constraints). The plans can be reviewed subsequently, every time the permit needs notice for permit modification, renewals, and other actions. Refer to EPA's December 2021 document for more discussion on this point.

EPA's proposed changes, described below, are aimed at improving effectiveness and efficiency in the permitting program while continuing to support more modern public participation.

a. Newspaper Notice Requirements

RCRA section 7004(b)(2), 42 U.S.C. 6974(b)(2), states: ''Before the issuing of a permit to any person with respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 3005, the Administrator shall—(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the Agency's intention to issue such permit. . . .'' EPA recognizes that when this provision was added to RCRA in 1980, local print newspapers were widely available, but according to research (as described in the December 2021 document), local print newspapers are not available in all communities, newspaper circulations are declining, and where they are available, they are often not representative of how most members of the public prefer to consume news and obtain information. Newspaper content is increasingly being published on the internet, as discussed in the December 2021 document. Since the December 2021 document was published, the Public Notice Resource Center, as of February 7, 2023, stated ''Bills have been introduced in at least 15 states allowing or requiring official notice to be published on various platforms other than local newspapers.'' [16] This is a continuation of a state trend and, in addition to the points made in the December 2021 document, provides additional support for clarifying existing flexibilities in EPA's regulations and, where the regulations are unduly restrictive, making them more flexible.

Furthermore, both state agencies and the regulated community have requested that EPA provide flexibility in how to satisfy this requirement. EPA is therefore proposing two categories of amendments: ''Amendments to the Newspaper Notice Requirements in Part 124'' and ''Amendments to the Newspaper Notice Definition in Part 260,'' as well as conforming edits.

Amendments to the Newspaper Notice Requirements in Part 124

EPA is proposing to revise the main newspaper notice requirement for RCRA permits in part 124 as follows:

- Revise § 124.10(c)(2)(ii) to codify the existing interpretation that a newspaper can be published in print and/or online; include a definition of ''newspaper notice'' for this requirement, which includes qualifying agency publications as an option; and add a parenthetical that encourages additional methods to be used.
- Revise § 124.207(b)(1) for issuance of a Standardized Permit to reference the newspaper notice criteria in the revised paragraph at § 124.10(c)(2)(ii).
- Revise § 124.31(d)(1)(i) to align the pre-application public meeting notice requirements with the newspaper notice requirements in § 124.10(c)(2)(ii).

First, EPA is proposing amendments to § 124.10(c)(2)(ii), which implements RCRA section 7004(b)(2) by requiring newspaper notice of the intent to issue a permit (including renewals). This section also applies to a range of other permitting actions that are not governed by section 7004(b)(2), such as permit modifications. Currently, the regulation at § 124.10(c)(2)(ii) requires notice by ''publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.'' In its December 2021 document, EPA stated its interpretation that online newspapers can qualify as ''newspapers'' within the meaning of RCRA section 7004(b)(2) and EPA's regulations.[17] Public commenters expressed their support for this interpretation. Some commenters suggested that EPA codify this interpretation in the regulations to improve transparency. After reviewing the public comments, EPA agrees with suggestions to identify in the regulatory language that both paper and online versions can qualify as newspapers within the meaning of RCRA section 7004(b)(2) and EPA's regulations. Thus, EPA is proposing to specify in § 124.10(c)(2)(ii)), that newspaper notices ''can be published print and/or online.''

EPA is also proposing to revise § 124.10(c)(2)(ii)) to provide that, for the purposes of this provision, newspaper notice means a notice published in a regularly issued collection of articles or informational postings that provides updates on current events and matters of interest, is accessible to the public, can include agency publications, and can be published in print and/or online. EPA requested public comment in the December 2021 document regarding whether Agency publications such as bulletins or newsletters published online by state environmental authorities, could qualify as newspapers for newspaper notice, and thus satisfy section 7004(b)(2) and its implementing regulations. In general, public

[15] US EPA (2016). *Resource Conservation and Recovery Act Public Participation Manual* (530–R–16–013), Chapter 5. Available at: *https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf.* Refer to the more recent website for ''*RCRA Public Participation Tools and Resources*'' at *https://www.epa.gov/hwpermitting/rcra-public-participation-tools-and-resources.*

[16] Public Notice Resource Center (February 7, 2023). *Newspaper notice targeted in multiple states* available at: *https://www.pnrc.net/2023/02/07/bills-undermining-newspaper-notice-introduced-in-multiple-states/.*

[17] In 86 FR 71482, December 16, 2021, *Modernizing Public Notice for RCRA Hazardous Waste Permitting and Other Actions,* the Agency stated ''EPA sees no reason that an online newspaper cannot qualify as a newspaper of general circulation. Nor is EPA aware of a reason that an online newspaper cannot qualify as 'major' and 'local.' '' Refer to page 71490.

comments supported the Agency providing flexibility rather than no flexibility. While it was beyond the scope of the question, several commenters suggested that multiple methods be mandated. (Refer to the full list of comments in the docket EPA–HQ–OLEM–2021–0348.) In view of the comments, and on further consideration, EPA is proposing to define newspaper for the purposes of newspaper notice in this provision not as a list of specific types of publications, such as newsletters and bulletins, but by codifying criteria to flexibly define what can qualify as a newspaper. EPA has chosen not to require that a newspaper must be ''daily or weekly'' to qualify as a newspaper, as those words do not appear in RCRA 7004(b)(2), and EPA does not believe that publication frequency is necessary for a publication to qualify as a newspaper or to effectively provide notice.

EPA believes this approach will maximize regulatory flexibility while adhering to RCRA's statutory requirements and will ensure the language is amenable to future public communication preferences. The Agency is also proposing that if publication on an agency website is used to satisfy the notice requirement, then the notice must be posted for the duration of the comment period. This is consistent with how EPA has recently codified similar changes to other permitting programs (as discussed below).

EPA is also proposing to add the following sentence to § 124.10(c)(2)(ii): ''The Director may use other methods, in addition to newspaper and local radio, to ensure that the methods of public notice effectively inform all interested communities.'' EPA finds that including this language in the regulations emphasizes that permitting agencies should consider whether additional methods of public notice are necessary to effectively communicate the facility-specific plans and would be based on the specific characteristics of a community. EPA notes that similar language was promulgated for the National Pollutant Discharge Elimination System (NPDES) permit program as a note to paragraph § 124.10(c)(2)(iv).

Second, EPA is proposing to revise § 124.207(b)(1) to reference the revised paragraph at § 124.10(c)(2)(ii) for the permit issuance notice criteria (instead of separate criteria) for RCRA Standardized Permits.

Third, EPA is proposing to revise the notice requirements for the pre-application public meeting in § 124.31(d)(1)(i) to be consistent with the newspaper notice criteria specified in the revised paragraph at § 124.10(c)(2)(ii). This revision does not alter the applicant's responsibility to comply with the notice requirement for the pre-application meeting. The proposed language removes the outdated requirement that the notice ''must be published as a display advertisement,'' as this terminology is no longer relevant to modern notification methods. Additionally, this requirement pertains specifically to the pre-application meeting and is separate from the notice for final permit issuance; as such, it does not fall under the definitions in § 260.10 and is listed independently.

The newspaper notice flexibility for the permit issuance, described above, also applies to other newspaper notice regulations in this proposal. This includes, for example, newspaper notice related to permit modifications and pre-application meetings. These actions are not subject to section 7004(b)(2) of RCRA and include notice requirements for both the permitting agency and the applicant or permittee. Thus, the primary method to communicate the flexibility (aside from the permit decision making regulations in part 124) is by adding a new ''newspaper notice'' definition in part 260 as described below.

Amendments to the Newspaper Notice Definition in Part 260

EPA is proposing the following changes with respect to the newspaper notice definition in part 260:

- Add a definition to § 260.10 for ''Newspaper Notice.'' The § 260.10 definitions define terms used in parts 260 through 273. The following regulations already refer to ''newspaper notice'' so the definition will apply to the following sections with no revisions to them: §§ 264.113(e)(7)(ii), 264.113(e)(7)(iv), 265.112(d)(4), 265.113(e)(7)(ii), 265.113(e)(7)(iv), 265.118(f), 265.118(g)(1)(ii), 265.118(g)(2)(i), 265.193(h)(4), and 270.1(c)(6)(i).
- Revise the reference to ''Newspaper Notice'' and add a reference to the § 260.10 definition in the following sections: §§ 265.352(b)(2), 265.383(b)(2), 270.42(b)(2), 270.42(b)(5) 270.42(c)(2), 270.42(c)(5), 270.42(i), 270.145(a)(2), 271.20(a)(1)(i), 271.21(b)(3)(i)(B), 271.21(b)(4)(i)(B), and 271.23(a)(3).

EPA is proposing to add a definition of ''Newspaper Notice'' to § 260.10 and for the regulations that do not already specify ''newspaper notice,'' make conforming changes to reference the proposed defined term. EPA proposes to define ''Newspaper Notice'' to mean ''a notice in a regularly issued collection of articles or informational postings that provides updates on current events and matters of interest, is accessible to the public, can include agency publications, and can be published in print and/or online.'' For the purposes of this definition, the ''online'' aspect refers to any electronic or internet-accessible newspaper.

This proposed § 260.10 definition would only apply to the public notice requirements for notices of draft permit actions requiring newspaper notice (other than permit issuance [18]). EPA is proposing to amend the following regulations to be applicable to the newspaper notice definition: §§ 265.352(b)(2), 265.383(b)(2), 270.42(b)(2), 270.42(b)(5), 270.42(c)(2), 270.42(c)(5), 270.42(i), 270.145(a)(2), 271.20(a)(1)(i), 271.21(b)(3)(i)(B), 271.21(b)(4)(i)(B), and 271.23(a)(3).

Requests for Comment on Newspaper Notices

EPA requests comment relating to all proposed changes in this section (section V.A.7.a.). (Reference comment code ''MP–7a'' for all comments in this section.)

Additionally, EPA is requesting comment on whether EPA should promulgate more flexible requirements for the permit issuance public notice. Specifically, should EPA allow greater flexibility in the use of alternative methods for publishing the permit issuance public notice, for example, to include notices on agency or public websites, irrespective of whether they meet the new criteria proposed in § 124.10(c)(2)(ii)? Because these proposed changes would apply to actions other than permit issuance, the Agency is not limited to the language in RCRA 7004(b)(2) and thus has greater flexibility in considering more modern and effective notice mechanisms. EPA's proposed changes for these types of actions are more in line with changes the Agency has codified for other permitting programs at § 124.10(c)(2)(iii)–(iv). Specifically, the Office of Air rulemaking for Prevention of Significant Deterioration (PSD) permits (81 FR 71613, October 18, 2016) and EPA Office of Water's rulemaking for NPDES permits (84 FR 3324, February 12, 2019) addressed newspaper notice requirements. In those rulemakings, the Agency described the basis for the regulatory change from

[18] The 40 CFR 260.10 definitions are not applicable to part 124 (which includes the notice requirements for the Agency's notice of a draft permit for permit issuance). The § 260.10 definitions define terms used in parts 260 through 273.

newspaper notice to internet postings to satisfy public notice requirements and the decision to replace or provide an alternative to the newspaper requirement, supported by data and rationale presented in the preambles of those rulemakings.[19]

In its December 2021 document, EPA requested comment on whether it should modify its RCRA hazardous waste regulations that require newspaper notice in order to allow the Agency more flexibility for notices that are not governed by section 7004(b)(2) (for example, permit modifications). EPA is not proposing to codify specific methods of notice, such as agency newsletters and bulletins, in the definition at § 260.10; this approach is informed by public comments received on the December 2021 public notice. EPA was persuaded by commenters who said that would be too prescriptive.

The majority of the public response to the 2021 request for comment indicated that EPA should amend its regulations to provide more flexibility for notice of actions other than the intent to issue a permit, but not codify specific methods. For example, the Michigan Department of Environment commented,

''[i]t is always better to make a regulation straightforward than rely on interpretation memos or guidance. To that end RCRA regulations should be amended to allow for equivalent alternative means of public noticing. However, the amendments should not be so specific as to limit those alternative notification methods given the advances that are likely to occur [in] terms of electronic communication.'' [20]

Since the promulgation of the PSD and NPDES rules that allow for notice on public or agency websites, EPA has been requested by states to include flexibility for the RCRA program.[21]

b. Mailing List Notification of Permit Actions

EPA is proposing to codify, and thereby clarify, its interpretation regarding the flexibility for mailing list notifications in the following provisions. Specifically, EPA is proposing to:

- Add new paragraphs at § 124.10(c)(1)(xii) to recognize that electronic mail may satisfy notices requirements for mailing list notifications for RCRA permit actions and provide for updated methods of maintaining mailing lists. Refer to proposed related technical corrections to restore the order for § 124.10(c)(1)(vi)–(xi).
- Revise the definition of ''facility mailing list'' in § 270.2 [22] to reference § 124.10(c)(1)(xii) and to clarify that the contact information included on mailing lists may consist of electronic mail addresses.
- Make conforming edits to §§ 124.32(b)(1), 124.204(d)(10), 124.207(a)(4), and 124.212(b)(2) to cross-reference the new paragraph at § 124.10(c)(1)(xii).

First, EPA is proposing to add new paragraphs § 124.10(c)(1)(xii)(A) and (B), which would apply only to RCRA permits. Section 124.10, ''Public notice of permit actions and public comment period,'' sets forth the mail notification requirements applicable to permit actions, including notice to persons on a mailing list under § 124.10(c)(1)(ix).[23] Although part 124, ''Procedures for Decision Making,'' applies broadly across other EPA permitting programs, EPA has in some instances added program-specific provisions to this part to provide greater flexibility and to modernize public notice requirements. Consistent with those precedents, EPA is proposing to add § 124.10(c)(1)(xii)(A) and (B) to codify, for RCRA permit actions, that notice to persons on the facility mailing list may be satisfied by either postal mail or electronic mail and to provide updated methods for maintaining mailing lists.

Proposed § 124.10(c)(1)(xii)(A) would clarify that the mail notification requirements in paragraph (c)(1) may be satisfied by either postal or electronic mail when using the facility mailing list.

Proposed § 124.10(c)(1)(xii)(B) is modeled on the PSD permit regulation at § 124.10(c)(2)(iii)(A) regarding maintenance of the mailing list. This proposed revision would allow the use of internet-based approaches, among other methods, for periodic updates to the facility mailing list in lieu of the requirements in § 124.10(c)(1)(ix)(B) and (C), while continuing to provide the public with opportunities to respond and indicate whether they wish to remain on the list. EPA is specifically soliciting comment on whether the changes based on the PSD program are appropriate for the RCRA program.

Second, EPA is proposing to revise the definition of ''facility mailing list'' in § 270.2 to reference new § 124.10(c)(1)(xii) and to specify that the contact information on the mailing list may include postal and/or electronic mail addresses. EPA is also proposing to remove the reference to ''EPA'' maintaining the list, because § 124.10(c)(1)(xii) sufficiently identifies the mailing list and the entity responsible for maintaining it.

These proposed regulatory revisions would serve two purposes: first, to modernize the methods available for updating mailing lists; and second, to clarify that the mail notification requirements associated with mailing lists for the covered RCRA permit actions may be satisfied by electronic mail. EPA's rationale for these changes is informed by the basis for the corresponding PSD provision promulgated at 81 FR 71613 (October 18, 2016).

With respect to the second purpose, these amendments would codify a practice already used by many state programs, under which email may be used in lieu of postal mail for mailing list notifications where appropriate, consistent with EPA's RCRA Public Participation Manual—Tools Mailing Lists (EPA–530–F–20–001).[24] The use of alternatives to postal mail may better

[19] The EPA RCRA, PSD and NPDES permitting programs have regulatory requirements under ''Public notice of permit actions and public comment period'' at 40 CFR 124.10. The PSD notice at § 124.10(c)(2)(iii)(B) now requires notification to the public for the duration of the public comment period, on a ''public website'' identified by the Director (in lieu of the requirement for publication of a notice in a daily or weekly newspaper in § 124.10(c)(2)(i)). The information includes the following: A notice of availability of the draft permit for public comment (or the denial of the permit application), the draft permit, information on how to access the administrative record, and information on how to request and/or attend a public hearing on the draft permit. The NPDES notice at § 124.10(c)(2)(iv) now states that, for NPDES major permits and NPDES general permits, the Director may publish all notices of activities (described in § 124.10(a)(1)) to the permitting authority's public website in lieu of the requirement for publication of a notice in a daily or weekly newspaper (as described in § 124.10(c)(2)(i)). If the Director selects this option for a draft permit, they will include the public notice contents in § 124.10(d) and post the draft permit and fact sheet on the website for the duration of the public comment period.

[20] Michigan Department of Environment, Great Lakes, and Energy. (February 2, 2022). Public comment on EPA's notice: *Modernizing Public Notice for Resource Conservation and Recovery Act Hazardous Waste Permitting and Other Actions https://www.regulations.gov* (Comment ID: EPA–HQ–OLEM–2021–0348–0026).

[21] For example, in 2017 the Alabama Department of Environmental Management (ADEM) requested that EPA follow PSD's lead in their comment on E.O. 13777, (Docket ID: EPA–HQ–OA–2017–0190), then in 2022 ADEM reiterated this comment for 86 FR 71482, December 16, 2021 (Comment ID: EPA–HQ–OLEM–2021–0348–0037).

[22] The 40 CFR 270.2 Definitions apply to parts 270, 271 and 124. There are permit modification mailing list notification requirements in § 270.42 in addition to the notification requirements in part 124.

[23] See related technical corrections that restore the order for § 124.10(c)(1)(vi)–(xi).

[24] Refer to US EPA's website for *RCRA Public Participation Tools and Resources* at *https://www.epa.gov/hwpermitting/rcra-public-participation-tools-and-resources,* and specifically US EPA's *RCRA Public Participation Manual—Tools Mailing Lists* (EPA–530–F–20–001) at *https://www.epa.gov/sites/default/files/2021-04/documents/mailing_lists-rcra_tools-508_compliant_12-20-19_updated.pdf.*

serve communities that prefer to receive information electronically and may also reduce costs and time associated with the permitting process for both permitting authorities and permit applicants. EPA has received recommendations supporting these changes from regulated entities [25] and state agencies,[26] including comments submitted in response to EPA's December 2021 document.

EPA emphasizes that these proposed amendments would simply clarify the available options for mailing list notifications; permitting authorities would retain discretion to determine the format that is most appropriate for a particular community. Some communities may prefer postal mail for notices concerning facility-related actions, while others may prefer electronic notice. EPA has also heard that some community members often object to receiving multiple postal mail notices for permit modifications and would prefer fewer notices. (The information EPA has received pertains specifically to permit modifications, presumably because a facility may receive multiple modifications in a given year, whereas permit issuance actions occur less frequently due to the maximum 10-year permit term.)

EPA is requesting comment on all proposed changes to §§ 124.10(c)(1)(xii), 124.10(c)(1)(xii)(A) and (B), the definition of ''facility mailing list'' in § 270.2, and the conforming changes to §§ 124.32(b)(1), 124.204(d)(10), 124.207(a)(4), and 124.212(b)(2). EPA also requests comment on whether RCRA public notice-by-mail requirements for mailing lists may be satisfied by email, and more generally, by other electronic formats. EPA further seeks comment on whether more flexible terminology—such as ''electronic messages''—should be used to describe these communications, with the understanding that such term would encompass email. (Reference comment code ''MP–7b.'')

c. Clarify Virtual Hearings/Meetings Are Allowed in Permitting Process

EPA is proposing to codify the flexibility for hearings and meetings in the permitting process to be conducted either in person or by remote means (for example, as a ''virtual'' meeting) in the following regulations:

- For the Agency's public hearings on draft permits, in § 124.12(a)(3)(ii)
- For the applicant's public meetings on the permit application, in § 124.31(b)
- For the permittee's Class 2 and Class 3 modification meetings on the permit modification request, in §§ 270.42(b)(4) and 270.42(c)(4)

EPA notes that the practice of allowing hearings and meetings to be conducted by remote means is not limited to these regulations, and this proposed clarification reflects the Agency's position as described in a memorandum from EPA's Office of General Counsel on April 16, 2020.[27] The April 2020 memorandum confirmed the Agency's position that virtual hearings and meetings are a permissible tool that provide for public participation in lieu of in person public hearings and meetings. Although EPA published the April 2020 memorandum in response to the COVID–19 pandemic, which raised many questions about whether EPA and states could satisfy public participation requirements under various federal environmental statutes by conducting virtual rather than in-person public hearings and meetings, the memorandum remains EPA's current position on this issue.

The April 2020 memo states that conducting virtual hearings or meetings can satisfy public participation requirements. The RCRA Public Participation Manual toolkit also recognizes the existing acceptability of virtual meetings [28] and hearings.[29] EPA also reiterated this policy in its December 2021 public notice.[30] Other EPA programs have detailed guidance on virtual public hearings, for example, refer to ''Modernizing Public Hearings for Water Quality Standard Decisions Consistent with 40 CFR 25.5,'' EPA 823–F–19–005 (June 2019).

Because technology and terminology may change over time, EPA proposes to allow meetings and hearings to use any format or technology that permits remote attendance, so long as the event constitutes a ''meeting'' or ''hearing.'' It need not necessarily be described as a ''virtual meeting'' or ''virtual hearing.''

EPA is soliciting comment on the proposed changes to these regulations (§§ 124.12(a)(3)(ii), 124.31(b), 270.42(b)(4), 270.42(c)(4)). EPA is specifically requesting comment on the wording—whether to state that a meeting may be ''virtual, for example,'' or instead to state only that a meeting may be conducted by ''remote means,'' noting that EPA does not intend the proposed regulation to be limited by current technologies. (Reference comment code ''MP–7c.'')

8. Location Standards Regulatory Comments

EPA is proposing to revise § 264.18(a) and (b) to move language currently noted as a ''comment'' into the body of the regulatory text since regulatory content is recommended to be in the CFR sections rather than in a ''note'' or ''comment.'' This change is intended to improve clarity of these location standards. Furthermore, because of the comment's placement outside of the regulatory text structure, it can be difficult to tell what provision the comment applies to. For these reasons, EPA believes incorporating ''comment'' language into the standard regulatory text structure will eliminate confusion and facilitate understanding of and compliance with requirements.

For the comment following § 264.18(b)(1)(ii)(D) (Floodplains), EPA is proposing to incorporate the comment language into the existing paragraph § 264.18(b)(1)(i), for more logical placement of the criteria for an appropriate location where wastes can be moved before flood waters can reach the facility.

For the comment following § 264.18(b)(2)(iii) (Floodplains), EPA is proposing to place the existing language into new paragraph § 264.18(b)(3) and to revise the guidance from ''are advised to'' to ''should,'' thereby affirmatively informing the applicant that they should consider these other federal laws in considering facility sighting.

Lastly, EPA is proposing to incorporate a statement from the comment following § 264.18(a)(2)(iii) (Seismic considerations) by adding the first sentence ''Procedures for

[25] This flexibility was supported by 86 FR 71482, Dec 16, 2021 *Modernizing Public Notice for RCRA Hazardous Waste Permitting,* and commenters for regulated entities to the docket (Docket ID: EPA–HQ–OLEM–2021–0348): Coalition for Responsible Waste Incineration (Comment ID: EPA–HQ–OLEM–2021–0348–0031), Environmental Technology Council (Comment ID: EPA–HQ–OLEM–2021–0348–0033), and possibly others.

[26] For example, Georgia Department of Natural Resources comment on E.O. 13777 (Comment ID: EPA–HQ–OA–2017–0190–32400) recommends codifying the ability to use email for mailing list notices per § 124.10(c)(1).

[27] US EPA memorandum from the Office of General Counsel to EPA Administrators on *Virtual Public Hearings and Meetings.* (April 16, 2020). Available at: *https://www.epa.gov/sites/production/files/2020-04/documents/ogc_virtual_hearing_memo_4-16-2020.pdf.*

[28] US EPA. *RCRA Public Participation Manual—Tools for Public Meetings.* Available at: *https://www.epa.gov/sites/default/files/2020-04/documents/public_meetings-rcra_tools-508_compliant_12-20-191.pdf.*

[29] US EPA. *RCRA Public Participation Manual—Tools for Public Hearings.* Available at: *https://www.epa.gov/sites/default/files/2020-04/documents/public_hearings-rcra_tools-508_compliant_12-20-191.pdf.*

[30] 86 FR 71482, December 16, 2021. *Modernizing Public Notice for RCRA Hazardous Waste Permitting and Other Actions;* Notice.

demonstrating compliance with this standard in Part B of the permit application are specified in § 270.14(b)(11)'' to the regulatory text at the new paragraph § 264.18(a)(3). Note that the comment itself is not being removed or amended, since it contains additional information that is not being incorporated into the regulatory text.

EPA requests comments on these proposed changes (reference comment code ''LS–8'').

9. Transfer Facility Storage Period

EPA is proposing revisions to the transporter requirements at § 263.12, and the universal waste management standards at §§ 273.9 and 273.53 to extend the storage period that a hazardous waste may be held at transfer facilities during the normal course of transportation from ''ten (10) days'' to ''14 consecutive calendar days.'' EPA is also proposing conforming changes in §§ 264.1(g)(9), 265.1(c)(12), and 270.1(c)(2)(vi) where the existing 10-day storage period is referenced. The Environmental Technology Council (ETC), a trade association representing the hazardous waste treatment, storage, and disposal industry, raised concerns about the insufficiency of the current 10-day storage period.[31] Specifically, ETC has indicated that the hazardous waste industry has changed since the regulations were promulgated in 1980 and because a national marketplace for hazardous waste services presently exists, shipments travel longer distances and take more time. In addition, the Department of Transportation's motor carrier rules limit the time that drivers can operate, compounding the problem. To comply with the 10-day limit, ETC indicated that shipments often must be routed from one 10-day transfer facility to another transfer facility, perhaps multiple times. ETC also indicated that, because ''days'' under the current rule does not distinguish between business days and non-business days, transporters may only have five or six days available to transport hazardous waste shipments that originate late in the week if drivers do not operate over the weekends. For these reasons, ETC recommended that EPA increase the storage time limit for transfer facilities to 14 days, indicating that this would be consistent with modern transportation practices, or interpret the current 10-day limit as 10 business days rather than calendar days.

EPA does not interpret the existing 10-day storage period to mean 10 business days rather than 10 calendar days. EPA explained in the 2016 Hazardous Waste Generator Improvements final rule (81 FR 85732) that due to differences in business schedules, use of the term ''business days'' rather than ''calendar days'' becomes difficult to define in a rule.[32]

Therefore, EPA is proposing to revise paragraph (a) of § 263.12 by extending the storage period at a transfer facility from ''ten (10) days'' to ''14 consecutive calendar days,'' and conforming changes to §§ 264.1(g)(9), 265.1(c)(12), and 270.1(c)(2)(vi). If finalized, the regulatory amendments would allow transporters to hold manifested hazardous waste shipments for up to 14 consecutive calendar days at a transfer facility without a RCRA permit and without complying with the standards applicable to hazardous waste storage facilities.

EPA is also proposing to extend the storage period listed in the standards for universal waste management in §§ 273.9 and 273.53(a)–(b) from ten (10) days to 14 consecutive calendar days to be consistent with the storage period for other hazardous waste shipments. Hazardous waste is considered to be in transportation or in transit from the time the initial transporter accepts custody of the manifested shipment from the generator until the designated facility signs the manifest at the time of receipt of the waste from the delivering transporter, even when the waste is not actively on the road. Accordingly, hazardous waste stored temporarily on a truck sitting idle at a transfer facility is still considered to be in transportation, and the 14 consecutive calendar days begins when the hazardous waste arrives at the transfer facility.

EPA requests comment on this proposed change (reference comment code ''TF–9'').

10. Drip Pads

EPA is proposing to remove outdated distinctions between ''new'' and ''existing'' drip pads and related changes in the following regulations: §§ 264.570(a), 264.571, 264.572, 264.573(a)(4)(i), 264.575(c)(1), 265.440(a), 265.441, 265.442, 265.443(a)(4)(i), 265.445(c)(1), and 270.26(c).

The ''existing'' drip pads in the current regulations are defined as drip pads constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are ''new'' in the existing regulations.

In order to address outdated distinctions between ''new'' and ''existing'' drip pads, EPA proposes to make revisions to ''subpart W Dip Pads'' in part 264 and in part 265. Specifically, EPA proposes to remove the ''new'' and/or ''existing'' drip pad terms in §§ 264.570(a), 264.572 section heading and introductory text, 264.573(a)(4)(i), 264.575(c)(i), 265.440(a), 265.442 section heading and introductory text, 265.443(a)(4)(i), and 265.445(c)(1).

EPA proposes to remove and reserve §§ 264.571 and 265.441 referring to existing drip pad integrity since this is covered by § 264.573 or § 265.443, and is redundant after the outdated distinctions between ''new'' and ''existing'' drip pads are removed.

Because of subsequent changes to the subpart W requirements, the initial subpart W rule's designation of what are ''existing'' and new'' drip pads became no longer important. The final 1992 rule (57 FR 61492, December 24, 1992) eliminated the previous requirements to change all drip pads to a liner and leak detection system within a prescribed time frame and added a section that allowed existing or new drip pads to be either low surface hydraulic conductivity drip pads or liner and leak detection system drip pads. Consequently, the applicability sections of the regulations are now being updated. Owners or operators of drip pads would be expected to comply with the respective standards of § 264.573 or § 265.443, regardless of when the drip pads were originally built. As the 1992 final rule described, drip pad owners and operators may elect to comply with subpart W by choosing between liners and leak detection and surface protection. Removing the distinctions are expected to simplify and clarify the regulations for the regulated community. Absent the distinction between new and existing drip pads, the Agency recognizes there may be instances where a drip pad needs to be upgraded to include either a liner and leak detection system or provided with surface protection. In such cases, it is not the Agency's intent to remove the existing requirement for the owner or operator to develop and submit a written plan. Additionally, it is not the Agency's intent to impose additional burden at closure on owners or operators of what the 1992 final rule called new drip pads by requiring them to comply with requirements originally

[31] Memorandum from David Case, Environmental Technology Council to EPA RCRA Permit Team on *RCRA Regulatory and Policy Improvements.* (March 8, 2023).

[32] 81 FR 85732, November 28, 2016. *Hazardous Waste Generator Improvements Rule.* Refer to page 85765.

designed for existing drip pads that did not comply with the liner requirements of § 264.573(b)(1) or § 265.443(b)(1). Also, by removing the distinction between new and existing drip pads, the Agency does not intend to eliminate the requirement that owners or operators of drip pads previously defined as ''existing'' that are seeking to upgrade, modify, or repair drip pads to current standards by installing a liner and leak detection system develop and submit written plans to the Regional Administrator no later than two (2) years before the date that those changes will be complete. We are proposing language that clarifies that owners or operators of certain drip pads needing to upgrade, repair, or modify are still required to submit written plans. In addition, the Agency does not intend to eliminate the requirement for owners and operators to submit as-built drawings and certifications to the Regional Administrator or state Director following completion of any upgrades, repairs, or modifications and is proposing language that clarifies this requirement. The Agency's intent is to make the subpart W provisions clearer while maintaining the protections envisioned in the 1992 rule.

EPA proposes to make a conforming edit in 270.26(c) to reference the standards in § 264.573 instead of § 264.571.

EPA requests comment on these proposed changes (reference comment code ''DP–10'').

B. Technical Corrections

EPA is proposing many technical corrections that would fix errors related to:

- Incorrect regulatory citations and references;
- References to regulatory text that has been removed;
- Spelling and typographical errors;
- Clarifying the responsible person; and
- Other corrections such as notation or punctuation errors.

In total, EPA is proposing technical corrections to the RCRA regulations in 40 CFR parts 124, 260, 261, 263, 264, 265, 266, 267, 268, 270, 271, and 279.

The following two sets of technical corrections are being proposed; first, the general technical corrections and second the technical corrections related to clarifying the responsible person.

1. General Technical Corrections

EPA is proposing the following technical corrections to 40 CFR parts 124, 260, 261, 263, 264, 265, 266, 267, 268, 270, 271, and 279. A description of each technical correction is below. Note that other technical corrections are proposed within the topics addressed in section V.A. above.

Part 124 proposed technical correction:

- Modify § 124.10(c)(1) to add and reserve (vi) to restore the order of paragraphs (vi) through (xi) since the numbering was inadvertently changed with a removal in § 124.10(c)(1)(vi) that should have ''reserved'' paragraph (vi) (89 FR 103500, December 18, 2024).

Part 260 proposed technical correction:

- Modify § 260.2(c)(2) to change cited regulation from ''§§ 264.71(a)(6) or 265.71(a)(6)'' to correct cite ''§§ 264.71(a)(2) or 265.71(a)(2).''
- Modify § 260.10 definition for Hazardous secondary material generator to remove a reference to § 261.2(a)(2)(ii), since this provision was removed and reserved in 2015 (80 FR 1736, footnote 37).

Part 261 proposed technical correction:

- Modify §§ 261.1034(b)(1), 261.1035(c)(10)(iv), 261.1063(b)(1), 261.1083(d)(1), 261.1083(d)(3)–(4), and 261.1083(d)(6)–(7) to correct Method 21 reference from ''part 60,'' to ''part 60, appendix A–7.''
- Modify § 261.1089(a) to change the cited paragraphs in the first sentence from ''paragraphs (b) through (j)'' to ''paragraphs (b) through (h).'' Delete the remaining next three sentences which discuss implementation of paragraphs (i) and (j) of that section. Paragraphs (i) and (j) were proposed, but not finalized and do not exist in the part 261 regulations. Section 261.1089 was developed to mirror many of the technical requirements for hazardous waste in § 264.1089, with certain provisions related to hazardous waste permits and recordkeeping removed. (Refer to 80 FR 1718, January 11, 2015.) The language in § 264.1089(i) and (j) was not carried over to § 261.1089, but the reference to these paragraphs in § 261.1089(a) was inadvertently published.

Part 263 proposed technical corrections:

- Modify § 263.20(a)(6)(i) to change cited regulation from ''paragraph (a)(4)(iii)(A)'' to correct cite ''paragraph (a)(4)(iii).''
- Modify § 263.20(a)(7) to change cited regulation from ''paragraph (a)(4)(iii)(A)'' to correct cite ''paragraph (a)(4)(iii).''

Part 264 proposed technical corrections:

- Modify § 264.13(b)(7)(iii)(B) to remove a part 268 Land Disposal Restrictions cite that is no longer relevant and consolidate the remaining information in § 264.13(b)(7)(iii)(B) from § 264.13(b)(7)(iii)(B)*(1)–(2).*
- Modify § 264.18(b)(1) to correct typographical error in ''or.'' The phrase ''prevent washout or any hazardous waste'' would be revised to read ''prevent washout of any hazardous waste.''
- Modify § 264.51 and § 264.53 to move the text from a comment at § 264.53 into a new paragraph at 264.51(c) since the information is better suited in § 264.51 and because **Federal Register** style standards no longer encourage use of comments.
- Modify § 264.56(g) to move the text from a comment at § 264.56 (Emergency procedures) into § 264.56(g) because it is better suited in the regulation text and **Federal Register** style standard no longer encourages use of comments.
- Modify § 264.73(b) to change cited regulation from ''§ 264.56(j)'' to correct cite ''§ 264.56(i);'' to omit seven references to ''§ 268.8'' that no longer exist (including associated text); take the hyphen out of ''groundwater'' and to address punctuation in the list. Revisions are specifically in §§ 264.73(b)(3)–(4), 264.73(b)(6)–(8), and 264.73(b)(10)–(18).
- Modify § 264.77(a) to change cited regulation from § 264.56(j) to correct cite § 264.56(i).
- Modify § 264.90(f)(2) to add ''the'' before ''alternative requirements.''
- Modify 264.94(a)(2) table 1 to correct the RCRA groundwater monitoring constituent concentration levels with a direct reference to the Safe Drinking Water Act (SDWA) National Primary Drinking Water Regulations (NPDWR) at 40 CFR part 141, removal of the unnecessary footnote, and conforming changes to paragraphs (a)(2) and (b). This update would be consistent with the intent of the 1982 Rule (47 FR 32274) to establish drinking water's Maximum Contaminant Levels as RCRA groundwater protection standards, and would also ensure that the groundwater constituents reflect the current SDWA concentrations over time, as updated by EPA, without requiring further amendments to the RCRA regulations. Additionally, silver is being removed as a constituent since it is no longer classified as a NPDWR standard.
- Modify § 264.112(c)(2)(iii) to add an ''or'' at the end of the statement since it is part of a list.
- Modify § 264.117(a)(2) to remove ''partial'' since this is not a correct term to apply to a unit (''partial closure'' is for the facility).
- Modify § 264.280(c)(7) to correct the spelling of ''except.''
- Modify subpart X—Miscellaneous Units source citation and § 264.600 to

correct FR citation in two places. From ''52 FR 46964'' to ''52 FR 46946.''

• Modify § 264.600 to add a missing ''s.'' The phrase would be revised from ''except as 264.1 provide otherwise'' to ''except as 264.1 provides otherwise.''

• Modify § 264.1034(b)(1) to correct Method 21 reference from ''part 60,'' to ''part 60, appendix A–7.''

• Modify § 264.1035(c)(10)(iv) to correct Method 21 reference from ''part 60, appendix A,'' to ''part 60, appendix A–7.''

• Modify § 264.1063(b)(1) to correct Method 21 reference from ''part 60,'' to ''part 60, appendix A–7.''

• Modify § 264.1080 to delete and reserve citations §§ 264.1080(f)–(g) since they applied to a single facility (commonly referred to as GE Silicones OSi Specialties Plant, located on State Route 2, Sistersville, West Virginia) and because those provisions are no longer applicable to the facility. This action deletes many subsections.

Part 265 proposed technical corrections:

• Modify § 265.13(b)(7)(iii)(B) to remove a part 268 Land Disposal Restrictions cite (§ 268.33(f)) and statement that is no longer relevant and consolidate the remaining information in § 265.13(b)(7)(iii)(B) *(1)–(2).*

• Modify § 265.56(g) to move the text from a comment after § 265.56(g) into § 265.56(g) regulatory text because it is better suited in the regulation text and **Federal Register** style standard no longer encourages use of comments.

• Modify § 265.73(b) to change cited regulation from ''§ 265.56(j)'' to correct cite § 265.56(i); Correct typographical error (move ''data'' to be after ''corrective action''), remove an extra ''265,'' add ''of this part,'' and take the hyphen out of ''groundwater'' (in § 265.73(b)(6)); omit seven references to ''§ 268.8'' that no longer exists; address punctuation in the list. The revisions cover paragraphs (3)–(4), (6), (8)–(14).

• Modify § 265.77(a) to change cited regulation from ''§ 265.56(j)'' to correct cite ''§ 265.56(i).''

• Modify § 265.92(a) to update groundwater monitoring references in comment. Replace the 1970's references with the current ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW–846)'' for discussion of recommended sampling and analysis procedures.

• Modify § 265.94(a)(2)(i) to indicate that the MCLs are ''specified'' in the referenced regulation and not ''listed.''

• Modify § 265.112(c)(1)(iii) to add an ''or'' at end of statement since it is part of a list.

• Modify § 265.112 to change cited FR reference from ''54 FR 37935'' to ''53 FR 37935.''

• Modify § 265.352(a) and (b)(1)–(3) to change all references of ''Solid Waste and Emergency Response'' to ''the Office of Land and Emergency Management.''

• Modify § 265.383(a) and (b)(1)–(3) to change all references of ''Solid Waste and Emergency Response'' to ''the Office of Land and Emergency Management.''

• Modify § 265.1034(b)(1) to correct Method 21 reference from ''part 60'' to ''part 60, appendix A–7.''

• Modify § 265.1035(c)(10)(iv) to correct Method 21 reference from ''part 60, appendix A'' to ''part 60, appendix A–7.''

• Modify § 265.1063(b)(1) to correct Method 21 reference from ''part 60'' to ''part 60, appendix A–7.''

• Modify § 265.1080 to delete and reserve § 265.1080(f)–(g) since they applied to a single facility (commonly referred to as GE Silicones OSi Specialties Plant, located on State Route 2, Sistersville, West Virginia) and because those provisions are no longer applicable to the facility. This action deletes many subsections.

• Modify §§ 265.1084(d)(1), 265.1084(d)(3)–(4), 265.1084(d)(6)–(7) to correct Method 21 reference from ''part 60, appendix A,'' to ''part 60, appendix A–7.''

• Modify the table in appendix III to part 265 to reference the SDWA National Primary Drinking Water Regulations (NPDWR) Maximum Contaminant Level (MCLs) at 40 CFR part 141. This update would be consistent with the intent of the 1982 Rule (47 FR 32274) to base the RCRA groundwater monitoring constituents on drinking water contaminant levels. It would also ensure that the groundwater constituents reflect current SDWA concentrations over time, as updated by EPA, without requiring further amendments to the RCRA regulations. Other proposed corrections include: appendix heading correction (removing ''Interim'' and adding ''National''); revising the parameter ''2,4,5–TP Silver'' to ''2,4,5–TP (Silvex)''; removing from the appendix, both ''silver'' (which is no longer classified as an NPDWR constituent) and coliform bacteria (which, as of the 2013 Rule, no longer has a MCL value, see 78 FR 10269).

Part 266 proposed technical correction:

• Modify appendix IX to part 266 in section 8.3 ''APCS RE Default Values for Ash'' and changed the referenced table from ''table 8.1–4'' to ''table 8.2–1.''

Part 267 proposed technical correction:

• Modify § 267.71(b)(2) to change cited regulation from ''§ 267.13(c)'' to correct cite ''§ 267.13(b).''

Part 268 proposed technical corrections:

• Modify § 268.1(c)(3)(i) to change cited regulation from ''§ 146.6(a)'' to correct cite ''§ 146.5(a).''

• Modify § 268.7(a)(9)(iii) to change ''D001–D043'' to ''D001–D008 and D010–D043'' (since lab packs cannot contain D009 and be incinerated per § 268.42(c)).

• Modify § 268.40 table ''Treatment Standards For Hazardous Wastes'' in the ''D009'' category row at the ''All D009 wastewaters'' subcategory row by removing ''mg/L TCLP'' from the ''wastewater'' column at that row since it is already included in the header.

• Modify § 268.40 table ''Treatment Standards For Hazardous Wastes'' in the ''F039'' category row in the table ''Treatment Standards For Hazardous Wastes'' for the first entry which is Acenaphthylene (CAS# 208–96–8) and revise the concentration (in the last column) to have a decimal place instead of a comma.

• Modify § 268.40, table ''Treatment Standards For Hazardous Wastes,'' to correct the common name for CAS number 108–45–2. This replaces the second use of ''2,4-Dimethylaniline (2,4-xylidine)'' under ''Common name'' in the table under F039 Waste Code and corrects the common name to be ''1,3-Phenylenediamine'' which is correct for CAS number 108–45–2 and the related data on that line. This information is under ''F039'' in the Waste Code column.[33]

• Modify § 268.40 under ''F039'' mercury nonwastewater treatment standard in the table ''Treatment Standards For Hazardous Wastes'' by correcting the decimal place in the nonwastewater column from ''0.25'' to ''0.025.''

• Modify § 268.40 for U037 chlorobenzene in the table ''Treatment Standards For Hazardous Wastes'' by correcting the decimal place in the

[33] Refer to 70 FR 9138, Feb. 24, 2005, *Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of Five Chemicals as Appendix VIII Constituents; Addition of Four Chemicals to the Treatment Standards of F039 and the Universal Treatment Standards,* page 9178, and the NIH National Library of Medicine website (*https://pubchem.ncbi.nlm.nih.gov/compound/m-Phenylenediamine*) indicating that the 1,3-Phenylenediamine common name has CAS #108–45–2. Note that there are other synonyms for that chemical compound (*e.g.,* M-Phenylenediamine).

nonwastewaters column from ''60'' to ''6.0.''

• Modify § 268.48 footnote number 3 to the table in order to use the correct spelling for ''in part.''

Part 270 proposed technical corrections:

• Modify § 270.1(c)(3)(i)(D) to add a missing ''s'' to ''explosive.''

• Modify § 270.2 ''Application'' definition to change the permit application scope from ending at § 270.29 (permit denial) to § 270.28.

• Modify § 270.10(d) to change § 270.29 to § 270.28.

• Modify § 270.10(e)(1)(iii) Note by changing ''45 FR 33006'' to correct reference ''45 FR 33066.''

• Modify § 270.14(a) to correct citations (from ''0.14'' to ''270.15''; from ''270.29'' to ''270.28'') and use correct spelling of ''cannot.''

• Modify § 270.14(b)(7) to correct citations from ''§ 264.255, and § 264.200'' to the appropriate citation ''§ 264.253, and § 264.196.'' (§ 264.255 is reserved and § 264.200 addresses the applicability of the RCRA organic air emissions standards unrelated to specific contingency plan requirements.)

• Modify § 270.14(b)(11)(iii) and following comment to correct ''Federal Insurance Administration (FIA)'' to ''Federal Insurance and Mitigation Administration (FIMA)'' and add the Federal Emergency Management Agency acronym ''(FEMA).''

• Modify § 270.14(c)(7) to change citation from ''§ 264.98(h)(5)'' to correct cite ''§ 264.98(g)(5).''

• Modify § 270.27(a)(6) to correct Method 21 reference to from ''part 60, appendix A'' to ''part 60, appendix A–7.''

• Modify § 270.42(a)(2) to replace ''an asterisk'' with ''footnote 1'' since the footnotes are now numbers and not asterisks.

• Modify § 270.42(b)(6)(iii) and (v) to replace ''265'' with ''264 (and other parts as applicable)'' in two instances. Also replaced ''appropriate'' with ''applicable.''

• Modify § 270.42 ''appendix I to § 270.42—Classification of Permit Modification'' to remove the § 268.8(a)(2)(ii) citation and associated regulatory language in five places since § 268.8(a)(2)(ii) was previously removed and reserved (revisions in appendix at F.1.c, F.4.a, G.1.e, G.5.c, H.5.c., J.6.c., and L.10. in the appendix, remove the § 269.8(a)(2)(ii) citation and associated regulatory language (that should have originally been listed as § 268.8(a)(2)(ii), but is now irrelevant). At L.10 in the appendix, add a missing modification class type for ''Class 1 with prior approval'' based on 70 FR 59578 indicating the intended class.

• Modify § 270.51(a)(1) to reflect the contents of Part B of the RCRA application are in §§ 270.14 through 270.28 (and not § 270.29).

• Modify § 270.280(a)(2) to change citation from ''§ 277.315'' to correct cite ''§ 270.315.''

• Modify § 270.280(a)(3) to change citation from ''§ 277.315'' to correct cite ''§ 270.315.''

• Modify § 270.290(l) to change citation from ''§ 267.16(a)(3)'' to correct cite ''§ 267.16(d)(3).''

• Modify § 270.315(f) to correct Method 21 reference from ''part 60, appendix A,'' to ''part 60, appendix A–7.''

Part 271 proposed technical corrections:

• Modify § 271.1(f) to change citation from ''§ 271.3(a)(3)'' to correct cite ''§ 271.3(b)(3).''

• Modify note in § 271.1(j)(2) to remove the citation ''§ 271.121(c)(3)'' since it no longer exists.

• Modify § 271.1 table 1 at the row for ''Listing of Inorganic Chemical Manufacturing Wastes'' (Oct. 31, 2001) by changing ''67 FR 58299'' to ''66 FR 58299.''

• Modify § 271.1 table 2 entry for ''Prohibition on land disposal of K176, K177, and K178 wastes, and prohibition on land disposal of radioactive waste mixed with K176, K177, and K178 wastes, including soil and debris'' (May 20, 2002) by changing the **Federal Register** date and reference from ''Nov. 20, 2002, 66 FR 28299'' to ''Nov. 20, 2001, 66 FR 58299.''

• Modify § 271.1 table 2 entry for ''Elimination of LDR Treatment Standards Exemption for K061 Derived Fertilizers'' (Jan. 24, 2003) by changing ''66 FR 48414'' to ''67 FR 48414.''

• Modify § 271.14(x) to remove citation § 124.10(a)(1)(v) from the list of part 124 references. There is no § 124.10(a)(1)(v) and no need for a replacement.

• Modify § 271.16(e) to change citation from ''§ 265.90(d)'' to correct cite ''§ 265.90(f).''

• Modify § 271.21(f) to change citation from ''§ 271.3(f)'' to correct cite ''§ 271.3(c).''

Part 279 proposed technical corrections:

• Modify §§ 279.42(b), (b)(1)–(2); 279.51(b), (b)(1)–(2); and 279.62(b), (b)(1)–(2) notification paragraphs to remove outdated information on methods to obtain an EPA Identification number.

In addition to the technical corrections listed above, other technical corrections are included within other topics discussed in this proposal in section V.A.

EPA requests comment on these proposed changes (reference comment code ''TC–1'').

2. Clarify the Responsible Person

EPA is proposing to update language in parts 260, 264, 265 and 270 (over 280 citations) to replace general placeholders for nouns (*e.g.,* ''he'') with the specific and corresponding position title, such as ''owner or operator,'' or ''Regional Administrator'' among others. EPA finds this will improve clarity in the regulations specifically as general placeholders could be mistaken to refer to more than one role. Necessary additional revisions were made in some cases to ensure subject-verb agreement.

The amended regulations are listed under the CFR Parts below.

In part 260, EPA proposes to clarify the responsible person in: §§ 260.10 [definitions for ''Administrator,'' ''Corrosion expert,'' ''Installation inspector,'' ''On-site,'' and ''Regional Administrator'']; §§ 260.20(d); 260.21(c); 260.22(a)(2); 260.22(b); 260.22(c)(2); 260.22(d)(2); 260.22(e)(2); 260.22(i)(12); 260.22(j); 260.22(l); 260.33(b); and 260.41(b).

In part 264, EPA proposes to clarify the responsible person in: §§ 264.1(f)(3); 264.1(g)(4); 264.3; 264.12(b); 264.12 [Comment]; 264.13(a)(1); 264.13(b); 264.14(a); 264.15(a); 264.15(b)(2); 264.15(d); 264.51(a); 264.52(b); 264.56(a); 264.56(b); 264.56(d); 264.56(d)(1); 264.56(d)(2); 264.56(i); 264.71(a)(2); 264.71(b); 264.73(a); 264.73(b)(9); 264.76(a)(6); 264.90(b)(2); 264.90(b)(5); 264.93(b); 264.94(b); 264.98(g)(6)(i); 264.99(i)(1); 264.99(j); 264.100(f); 264.100(h); 264.112(d)(1); 264.112(d)(2); 264.112(d)(2)(i); 264.112(d)(2)(ii); 264.113(a)(1)(ii)(B); 264.113(a)(2); 264.113(b)(1)(ii)(B); 264.113(b)(2); 264.113(e)(7); 264.113(e)(7)(iv); 264.115; 264.117(a)(2)(i); 264.117(a)(2)(ii); 264.119(a); 264.119(b)(2); 264.119(c); 264.120; 264.142(a)(2); 264.143; 264.143(a)(4); 264.143(a)(5); 264.143(a)(8); 264.143(a)(10); 264.143(b)(9); 264.143(e)(5); 264.143(e)(10); 264.143(f)(1); 264.143(f)(3); 264.143(f)(6); 264.143(f)(8); 264.143(g); 264.143(i); 264.145 [introductory text]; 264.145(a)(4); 264.145(a)(5); 264.145(a)(8); 264.145(a)(11); 264.145(b)(9); 264.145(e)(5); 264.145(e)(11); 264.145(f)(1); 264.145(f)(1)(i)(D); 264.145(f)(1)(ii)(D); 264.145(f)(3); 264.145(f)(6); 264.145(f)(8); 264.145(g); 264.145(i); 264.147(d); 264.147(e); 264.147(f)(1), 264.147(f)(1)(i)(C)(1);

264.147(f)(1)(ii)(D)(1); 264.147(f)(3); 264.147(f)(3)(i); 264.147(f)(6); 264.147(f)(7); 264.148(a); 264.149(a)(2); 264.150(a)(2); 264.193(h)(1); 264.195(b) Note; 264.258(b); 264.272(b); 264.276(a)(4); 264.278(a)(2); 264.278(f); 264.278(f)(3); 264.278(g); 264.278(h); 264.278(h)(1); 264.341(b); 264.344(a); 264.575(b); 264.1102(b); appendix I to part 264 [introductory text]; and appendix V to part 264 [introductory text].

In part 265, EPA proposes to clarify the responsible person in: §§ 265.1(c)(4)(ii); 265.1(c)(8); 265.12 [Comment]; 265.13(a)(1); 265.13(b); 265.14(a); 265.15(a); 265.15(b)(2); 265.15(d); 265.51(a); 265.52(b); 265.56(a); 265.56(b); 265.56(d); 265.56(d)(1); 265.56(d)(2); 265.56(i); 265.71(a)(2); 265.71(b); 265.73(a); 265.76(a)(6); 265.90(d); 265.92(a); 265.92(c)(1); 265.93(d)(5); 265.93(d)(6); 265.112(d)(1); 265.112(d)(2); 265.112(d)(2)(i); 265.112(d)(2)(ii); 265.112(d)(3); 265.112(d)(4); 265.113(a)(1)(ii)(B); 265.113(a)(2); 265.113(b)(1)(ii)(B); 265.113(b)(2); 265.113(e)(7); 265.113(e)(7)(iv); 265.115; 265.117(a)(2)(i); 265.117(a)(2)(ii); 265.118(e); 265.118(f); 265.118(g)(1)(ii); 265.118(g)(1)(iii); 265.118(g)(2); 265.118(g)(2)(ii); 265.119(a); 265.119(b)(2); 265.119(c); 265.120; 265.142(a)(2); 265.143 [introductory text]; 265.143(a)(4); 265.143(a)(5); 265.143(a)(8); 265.143(a)(10); 265.143(b)(9); 265.143(d)(5); 265.143(d)(10); 265.143(e)(1); 265.143(e)(3); 265.143(e)(4)(ii); 265.143(e)(4)(v); 265.143(e)(6); 265.143(e)(8); 265.143(f); 265.143(h); 265.145(a)(4); 265.145(a)(5); 265.145(a)(8); 264.145(a)(11); 265.145(b)(9); 265.145(d)(5); 265.145(d)(11); 265.145(e)(1); 265.145(e)(1)(i)(D); 265.145(e)(1)(ii)(D); 265.145(e)(3); 265.145(e)(4)(ii); 265.145(e)(4)(v); 265.145(e)(6); 265.145(e)(8); 265.145(f); 265.145(h); 265.147(c); 265.147(d); 265.147(e); 265.147(f)(1); 265.147(f)(1)(i)(C)(1); 265.147(f)(1)(ii)(D)(1); 265.147(f)(3); 265.147(f)(3)(i); 265.147(f)(4)(ii); 265.147(f)(4)(v); 265.147(f)(6); 265.147(f)(7); 265.148(a); 265.149(a)(2); 265.150(a)(2); 265.193(h)(1); 265.195(a) Note; 265.221(g); 265.226(b)(3) [Comment]; 265.229(b)(2); 265.258(b); 265.278(c); 265.278(d); 265.341 [introductory text]; 265.351 [Comment]; 265.373; 265.375; 265.381 [Comment]; 265.403(b) [Comment]; 265.404 [Comment]; 265.445(b); 265.1102(b); and appendix I to part 265; appendix V to part 265.

In part 270, EPA proposes to clarify the responsible person in: §§ 270.10(c); 270.10(e)(2); 270.14(b)(20); 270.14(c)(8); 270.17(d); 270.19(d); 270.22(a)(6); 270.23(b); 270.32(b)(3); 270.62(a)(2); 270.62(b)(4); 270.62(b)(5); 270.62(c)(2); 270.63(a)(1); 270.63(a)(2); 270.63(b); 270.63(c); 270.63(d); 270.63(d)(2); 270.65(c); 270.66(b)(3)(i); 270.70(b); 270.72(a)(4); 270.110(h); 270.140 [introductory text]; 270.145(a)(1); 270.145(a)(3); 270.145(a)(4); 270.145(d); 270.150(b); 270.150(c); 270.150(d); 270.150(e); 270.160(a); 270.175(a); 270.175(b); 270.180(a); 270.185; 270.215(d); and 270.220(b).

In addition to the revisions listed in this section, section V.A. discusses comprehensive revisions to other regulations, and within those revisions, clarifications are made to the responsible party for the rationale presented in this section.

EPA requests comment on these proposed changes (reference comment code ''TC–2'').

VI. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a state hazardous waste program to operate in lieu of the federal program within the state. Following authorization, EPA maintains its enforcement authorities, although authorized states have primary enforcement responsibility for their authorized programs. The standards and requirements for state authorization are found in 40 CFR part 271.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), an authorized state hazardous waste program operated entirely in lieu of the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state. When new, more stringent or broader federal requirements were promulgated, the state was obligated to adopt equivalent or more stringent authorities under state law within specified time frames. However, new requirements did not take effect in an authorized state until the state adopted such equivalent authorities, and these requirements did not become part of the authorized program enforceable by EPA until EPA authorized them.

In contrast, with the enactment of RCRA section 3006(g), which was added by HSWA, new federal requirements and prohibitions imposed pursuant to HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by section 3006(g) to implement HSWA-based requirements and prohibitions in authorized states until EPA authorizes equivalent state authorities. While states must still adopt state-law equivalents to HSWA-based requirements and prohibitions to retain final authorization, until the states do so, and EPA authorizes the state-law equivalents, EPA implements and enforces these provisions in authorized states.

Authorized states are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (refer also to § 271.1). If EPA promulgates a federal requirement that is less stringent or narrower in scope than an existing requirement or of equivalent stringency, authorized states may, but are not required to, adopt a new equivalent requirement regardless of whether it is promulgated under HSWA authority.

B. Effect on State Authorization

Some proposed amendments in this document are promulgated under the authority of HSWA and would be more stringent or broader in scope than the existing federal regulations. Thus, these standards would be applicable on the rule's effective date in all states and would be implemented and enforced by EPA until the states receive authorization. In contrast, some proposed amendments in this document are promulgated under non-HSWA authority and would be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. As stated above, authorized states are required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. Because some amendments in this proposed rule would be considered more stringent than the existing federal requirements, authorized states would be required to modify their programs to adopt regulations equivalent to these amendments contained in this proposed rule. In contrast, some amendments in this proposed rule are less stringent than the current hazardous waste regulations. Thus, authorized states may, but are not required to, adopt these changes. The following discussion identifies which proposed amendments would be promulgated under the authority of HSWA and which amendments would be promulgated under non-HSWA authority. In addition, EPA identifies the relative stringency of proposed amendments as

compared to the current hazardous waste regulations.

Permit application—Regulatory amendments discussed in section V.A.1. that would be promulgated under non-HSWA authority include Permit Application Information and Technical Requirements and Permit Application Submittal Timeframe. Permit Application Information and Technical Requirements and Permit Application Submittal Timeframe would be equivalent in stringency to the current regulations.

Preparedness and prevention/ contingency plan and emergency procedures—Regulatory amendments discussed in section V.A.2. would be promulgated under non-HSWA authority. Of these, all are more stringent than the current regulations, except Storage of Preparedness and Prevention Equipment which is equivalent in stringency to the current regulations.

Financial assurance—Regulatory amendments discussed in section V.A.3. would all be promulgated under non-HSWA authority. Amendments that would be equivalent to the current regulations include Clarifying Acceptable Financial Test Bond Ratings, Governing Rules for Standby Letters of Credit and Clarifying Appropriate Inflation Factors for Closure Cost Estimates. The amendment Removing the Requirement for a ''Negative Assurance'' in the Financial Test and Adding Limited Liability Corporations as an Accepted Organizational Structure would be less stringent than the current regulations.

RCRA organic air emission standards—Regulatory amendments discussed in section V.A.4. would all be promulgated under HSWA authority. These amendments would be less stringent than the current regulations: Clarification of Waste Analysis Plan (WAP) Applicability; and Instances Where Use of Method 21 Is Not Required.

General language clarification—Regulatory amendments discussed in section V.A.5. that would be promulgated under non-HSWA authority include: Facility Definition and Qualified Professional Engineer. Facility Definition would be more stringent than the current regulations, and Qualified Professional Engineer would be less stringent. The Overview of the RCRA Permit Program would be promulgated under HSWA authority and would be equivalent in stringency to the current regulations.

Permit modification—The regulatory amendment discussed in section V.A.6. that would be promulgated under HSWA authority is Modifications for Continued Permits and Reissuances, which would be equivalent in stringency to the current regulations. Notification of Modification Requests would be promulgated under non-HSWA authority, and this amendment is equivalent in stringency to current regulations.

Modernizing public notice—Regulatory amendments discussed in section V.A.7. would all be promulgated under non-HSWA authority and would all be less stringent or equivalent to the current regulations.

Location standards regulatory comments—Regulatory amendments discussed in section V.A.8. would be promulgated under non-HSWA authority. This provision would be of equivalent stringency to the current regulations.

Transfer facility storage period—Regulatory amendments discussed in section V.A.9. would be promulgated under non-HSWA authority. *Transfer Facility Storage Period* (Adjustment of the current 10-day storage period) would be less stringent than the current regulations.

Drip pads—Regulatory amendments discussed in section V.A.10. would all be promulgated under HSWA authority and be equivalent to the current regulations.

General technical corrections—Regulatory amendments discussed in section V.B.1. are equivalent to the current regulations.

Clarify the responsible person—Regulatory amendments discussed in section V.B.2. are equivalent to the current regulations.

Based on the determinations of stringency and authority discussed above, application of the revisions proposed in this action would be required as follows. All permits, including initial permits, permit modifications (as applicable), and permit renewals, issued after the effective date of the final rule would be required to incorporate final rule amendments promulgated under HSWA authority that are more stringent than the current regulations. EPA would issue EPA-administered portions of joint permits to implement these final amendments in the interim before a State adopts and becomes authorized for these amendments.

Amendments promulgated under HSWA authority that are less stringent than current regulations, as well as amendments promulgated under non-HSWA authority, take effect once a state becomes authorized for the amendment.

For permitted facilities, the proposed revisions, if finalized, would be incorporated upon modification or renewal of a facility's permit. Per § 270.4(a)(1)(iv), facilities would have to comply with requirements promulgated under subparts AA, BB, or CC of parts 265 (air emissions) immediately upon the effective date of the final rule, regardless of whether the new final requirements are incorporated into the facility's permit. When new regulations are promulgated after the issuance of a permit, EPA or authorized states may reopen a permit to incorporate the new requirements as stated in § 270.41.

Facilities, including interim status facilities, that have submitted an application for an initial permit, renewal permit, or (applicable) modified permit and which have not yet received their final permits as of the effective date of the final standards (*i.e.,* the effective date of the final rule for HSWA, more stringent amendments or the effective date of state authorization for all other amendments) would be required to modify their permit applications by the respective effective date to incorporate new final rule regulations.

C. Summary and Request for Comment

Some revisions in this document are being proposed under HSWA authority, and others are being proposed under non-HSWA authority. The amendments proposed today, whether under HSWA or non-HSWA authority, which are more stringent would require authorized state programs to modify their programs to adopt regulations equivalent to the provisions contained in this proposed rule once finalized. The amendments promulgated under non-HSWA authority would be applicable on the effective date of the final rule only in those states that do not have final authorization of their base RCRA programs. The amendments promulgated under the authority of HSWA would be applicable on the effective date of the final rule in all states. For revisions which are less stringent or equivalent in stringency, adoption by authorized states or territories would not be required. While not required, EPA strongly encourages authorized state and territorial programs to adopt all the proposed revisions, as finalized, to ease implementation, consistency, and compliance within the RCRA program. EPA requests comment on the state authorization approach for this proposed rule.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be

found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, Economic Assessment of the Permitting Technical Updates Proposed Rule, is available in the docket for this action.

B. Executive Order 14192 on Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR numbers 1573.17 and 1688.12. You can find a copy of the ICRs in the docket for this rule, and they are briefly summarized here.

The reporting and recordkeeping requirements reflected in these ICRs are necessary for EPA to oversee the generation and management of hazardous waste. Through this action, the Agency is proposing improvements to the permitting requirements, as well as soliciting information to expand the Agency's understanding of these issues to inform future policy decisions.

(ICR #1) Part B Permit Application, Permit Modifications, and Special Permits (Revision); OMB Control No. 2050–0009; EPA ICR number 1573.17.

Respondents/affected entities: The respondents will be permittees and permit applicants which are primarily composed of companies in the waste management, transportation, and remediation services and chemical manufacturing industry sectors, with various other manufacturing sectors also making up a large share of affected facilities.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: EPA estimates that there will be approximately one respondent per year affected by recordkeeping requirements related to permit applications. The number of respondents affected by other provisions varies.

Frequency of response: EPA estimates that average facility will submit permit applications or renewals once every 10 years. Other activities may be performed on a more or less frequent basis.

Total estimated burden reduction: 1 hour (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost savings: $20 (per year), includes $0 in annualized capital or operation and maintenance costs.

(ICR #2) RCRA Expanded Public Participation (Revision)—OMB Control No. 2050–0149; EPA ICR number 1688.12.

Respondents/affected entities: The respondents will be permit applicants which are primarily composed of companies in the waste management, transportation, and remediation services and chemical manufacturing industry sectors, with various other manufacturing sectors also making up a large share of affected facilities.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: EPA estimates that there will be approximately 265 respondents per year affected by recordkeeping requirements related to permit applications. The number of respondents affected by other provisions varies.

Frequency of response: EPA estimates that average facility will submit permit applications or renewals once every 10 years. Other activities may be performed on a more or less frequent basis.

Total estimated burden reduction: No change in burden. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost savings: $417,880 (per year), all from annualized capital or operation and maintenance cost savings.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than December 28, 2026.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden on the small entities subject to the rule. This conclusion is detailed in the associated Economic Assessment. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million (adjusted for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is estimated to result in an annual cost savings of $0.42 million (2025 dollars) for regulated facilities and an annual cost savings of $0.50 million (2025 dollars) for permitting authorities (both under a 3 percent discount rate). The costs involved in this action are projected not to exceed $193 million in 2025 dollars ($100 million in 1995$ adjusted for inflation using the GDP implicit price deflator) or more in any one year.

F. Executive Order 13132: Federalism

This action does not have federalism implications. This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 because it does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Thus, Executive Order 13175 does not apply to this action.

EPA expects that this action will have no direct Tribal implications other than amendments made to already regulated entities, and does not expect that this action would result in any adverse impacts on Tribal entities.

Therefore, Executive Order 13175 does not apply to this action. Consistent with the EPA's Policy on Consultation with Indian Tribes, the EPA conducted coordination efforts with federally recognized Tribes to announce the proposed rule and provide information regarding permitting activities located at or near Tribal lands. Additionally, the EPA intends to consult with and request comments from Tribal officials when finalizing this rule.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explains why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA does not believe that this proposal created risks for Adults or children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

List of Subjects

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Intergovernmental relations, Licensing and registration, and Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, and Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, and Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, and Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, and Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

40 CFR Part 267

Environmental protection, Hazardous waste, and Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, and Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, and Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Hazardous materials transportation, and Hazardous waste.

40 CFR Part 279

Environmental protection, Petroleum, Recycling, and Reporting and recordkeeping requirements.

Lee Zeldin,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR parts 124, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279 as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

■ 1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* Clean Air Act, 42 U.S.C. 7401 *et seq.*

Subpart A—General Program Requirements

■ 2. Amend § 124.3 by revising the second sentence of paragraph (a)(2) to read as follows:

§ 124.3 Application for a permit.

(a) * * *

(2) * * * See §§ 270.10, 270.13, 270.14, and, as applicable, 270.15 through 270.28 (RCRA), § 144.31 (UIC), 40 CFR 52.21 (PSD), and § 122.21 (NPDES).

* * * * *

■ 3. Amend § 124.10 by:

■ a. Redesignating paragraphs (c)(1)(vi) through (x) as paragraphs (c)(1)(vii) through (xi);

■ b. Adding and reserving paragraph (c)(1)(vi);

■ c. Adding paragraph (c)(1)(xii); and

■ d. Revising paragraph (c)(2)(ii).

The additions and revision read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

(vi) [Reserved]

(xii) For RCRA permits:

(A) Mail notification requirements specified in paragraph (c)(1) using the

facility mailing list may be satisfied by either postal or electronic mail.

(B) In updating the facility mailing list developed under paragraph (c)(1)(ix) of this section, the Director may use generally accepted methods (*e.g.,* hyperlink sign-up function or radio button on an agency website, sign-up sheet at a public hearing) in lieu of the methods specified in paragraphs (c)(1)(ix)(B) and (C). The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe or who has requested not to be included on the mailing list.

(2) * * *

(ii) For all RCRA permit actions subject to this section, comply with the following applicable public notice requirements: publication of a notice in a major local newspaper of general circulation and broadcast over local radio stations. ''Newspaper notice,'' for purposes of this provision, means a notice published in a regularly issued collection of articles or informational postings that provides updates on current events and matters of interest, is accessible to the public, can include agency publications, and can be published in print and/or online. If this notice is published on an agency website, then it must be posted for the duration of the comment period. The Director may use other methods, in addition to newspapers and local radio, to ensure that public notice methods effectively inform all interested communities.

* * * * *

■ 4. Amend § 124.12 by revising paragraph (a)(3)(ii) to read as follows:

§ 124.12 Public hearings.

(a) * * *

(3) * * *

(ii) when the Director schedules an in-person hearing under this section, the hearing shall, where possible, be held at a location convenient to the nearest population center to the proposed facility; for a hearing held by remote means, the Director will choose a method suited to the nearest population center;

* * * * *

Subpart B—Specific Procedures Applicable to RCRA Permits

■ 5. Amend § 124.31 by revising paragraphs (b) and (d)(1)(i) to read as follows:

§ 124.31 Pre-application public meeting and notice.

* * * * *

(b) Prior to the submission of a part B RCRA permit application for a facility, or a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J), the applicant must hold at least one meeting with the public to solicit questions from the community and inform the community of proposed hazardous waste management activities. The meeting may be held in person or by remote means (for example, as a virtual meeting). The applicant shall post a sign-in sheet or otherwise provide attendees a voluntary opportunity to provide their names and addresses.

* * * * *

(d) * * *

(1) * * *

(i) *A newspaper notice.* The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspaper of general circulation (online and/or print) in the county or equivalent jurisdiction that hosts the proposed location of the facility. ''Newspaper notice,'' for purposes of this provision, means a notice published in a regularly issued collection of articles or informational postings that provides updates on current events and matters of interest, is accessible to the public, can include agency publications, and can be published in print and/or online. If this notice is a publication on an agency website, then it must be posted for the duration of the comment period. In addition, if only print newspaper notice is used, the Director may instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public.

* * * * *

■ 6. Amend § 124.32 by revising paragraph (b)(1) to read as follows:

§ 124.32 Public notice requirements at the application stage.

* * * * *

(b) * * *

(1) The Director shall provide public notice as set forth in § 124.10(c)(1)(ix) and (xii), and notice to appropriate units of State and local government as set forth in § 124.10(c)(1)(x), that a part B permit application has been submitted to the Agency and is available for review.

* * * * *

Subpart G—Procedures for RCRA Standardized Permit

■ 7. Amend § 124.204 by revising the second sentence of paragraph (d)(10) to read as follows:

§ 124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?

* * * * *

(d) * * *

(10) * * * Only § 124.10(c)(1)(ix), (xii) and (c)(1)(x)(A) apply to the RCRA standardized permit. * * *

■ 8. Amend § 124.207 by revising paragraphs (a)(4) and (b)(1) to read as follows:

§ 124.207 What are the requirements for public notices?

(a) * * *

(4) To everyone on the facility mailing list developed according to the requirements in § 124.10 (c)(1)(ix) and (xii); and

* * * * *

(b) * * *

(1) Public notice using methods described in § 124.10(c)(2)(ii);

* * * * *

■ 9. Amend § 124.212 by revising paragraph (b)(2) to read as follows:

§ 124.212 What procedures must I follow to make routine changes?

* * * * *

(b) * * *

(2) Provide notice of the changes to the facility mailing list and to state and local governments in accordance with the procedures in § 124.10(c)(1)(ix), (x), and (xii).

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 10. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, 6939g, and 6974.

Subpart A—General

■ 11. Amend § 260.2 by revising the first sentence of paragraph (c)(2) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(c) * * *

(2) EPA will make any electronic manifest that is prepared and used in accordance with § 262.20(a)(3), or any paper manifest that is submitted to the system under §§ 264.71(a)(2) or 265.71(a)(2) of this chapter available to the public under this section when the

electronic or paper manifest is a complete and final document. * * *

* * * * *

Subpart B—Definitions

■ 12. Amend § 260.10 by:
■ a. Revising the definition ''Administrator'';
■ b. Revising the first sentence for the definition ''Corrosion expert'';
■ c. Revising paragraph (1) in the definition ''Facility'';
■ d. Adding the definition ''Hazardous secondary material generator'' in alphabetical order;
■ e. Revising the definition ''Installation inspector'';
■ f. Adding the definition ''Newspaper notice'' in alphabetical order;
■ g. Revising the second sentence for the definition ''On-site''; and
■ h. Revising the definition ''Regional Administrator''.

The revisions and additions read as follows:

§ 260.10 Definitions.

* * * * *

Administrator means the Administrator of the Environmental Protection Agency, or the Administrator's designee.

* * * * *

Corrosion expert means a person who, by reason of the person's knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. * * *

* * * * *

Facility means:

(1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal hazardous waste management units (*e.g.,* one or more landfills, surface impoundments, or combinations of them).

* * * * *

Hazardous secondary material generator means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, ''generating facility'' means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of § 261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

* * * * *

Installation inspector means a person who, by reason of the person's knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

* * * * *

Newspaper notice means a notice in a regularly issued collection of articles or informational postings that provides updates on current events and matters of interest, is accessible to the public, can include agency publications, and can be published in print and/or online.

* * * * *

On-site * * * Non-contiguous properties owned by the same person but connected by a right-of-way which this person controls and to which the public does not have access, is also considered on-site property.

* * * * *

Regional Administrator means the Regional Administrator for the EPA Region in which the facility is located, or the Regional Administrator's designee.

* * * * *

Subpart C—Rulemaking Petitions

■ 13. Amend § 260.20 by revising the first and third sentences of paragraph (d) to read as follows:

§ 260.20 General.

* * * * *

(d) Upon the written request of any interested person, the Administrator may, at the Administrator's discretion, hold an informal public hearing to consider oral comments on the tentative decision. * * * The Administrator may in any case decide on the Administrator's own motion to hold an informal public hearing.

* * * * *

■ 14. Amend § 260.21 by revising paragraph (c) to read as follows:

§ 260.21 Petitions for equivalent testing or analytical methods.

* * * * *

(c) After receiving a petition for an equivalent method, the Administrator may request any additional information on the proposed method which the Administrator may reasonably require to evaluate the method.

* * * * *

■ 15. Amend § 260.22 by:
■ a. Revising the first sentence of paragraph (a)(2);
■ b. Revising the fourth sentence of paragraph (b);
■ c. Revising the first sentence of paragraph (c)(2);
■ d. Revising paragraph (d)(2);
■ e. Revising paragraph (e)(2);
■ f. Revising the first sentence of paragraph (i)(12);
■ g. Revising paragraph (j); and
■ h. Revising paragraph (l).

The revisions read as follows:

§ 260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.

(a) * * *

(2) Based on a complete application, the Administrator must determine, where the Administrator has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. * * *

(b) * * * Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, the petitioner's demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. * * *

(c) * * *

(2) Based on a complete application, the Administrator must determine, where the Administrator has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. * * *

(d) * * *

(2) Based on a complete application, the Administrator must determine, where the Administrator has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

* * * * *

(e) * * *

(2) Based on a complete application, the Administrator must determine, where the Administrator has a reasonable basis to believe that additional factors (including additional constituents) other than those for which

the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

* * * * *

(i) * * *

(12) The following statement signed by the generator of the waste or their authorized representative: * * *

(j) After receiving a petition for an exclusion, the Administrator may request any additional information which the Administrator may reasonably require to evaluate the petition.

* * * * *

(l) The Administrator may exclude only part of the waste for which the demonstration is submitted where the Administrator has reason to believe that variability of the waste justifies a partial exclusion.

■ 16. Amend § 260.33 by revising the third sentence of paragraph (b) to read as follows:

§ 260.33 Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.

* * * * *

(b) * * * The Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at the Administrator's discretion. * * *

* * * * *

■ 17. Amend § 260.41 by revising the third sentence of paragraph (b) to read as follows:

§ 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.

* * * * *

(b) * * * If the owner or operator of the facility wishes to challenge the Regional Administrator's decision, the owner or operator may do so in the permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 18. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

Subpart AA—Air Emission Standards for Process Vents

■ 19. Amend § 261.1034 by revising paragraph (b)(1) to read as follows:

§ 261.1034 Test methods and procedures.

* * * * *

(b) * * *

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60, appendix A–7.

* * * * *

■ 20. Amend § 261.1035 by revising paragraph (c)(10)(iv) to read as follows:

§ 261.1035 Recordkeeping requirements.

* * * * *

(c) * * *

(10) * * *

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A–7 after it is successfully repaired or determined to be nonrepairable.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

■ 21. Amend § 261.1063 by revising paragraph (b)(1) to read as follows:

§ 261.1063 Test methods and procedures.

* * * * *

(b) * * *

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60, appendix A–7.

* * * * *

Subpart CC—Air Emission Standards for Tanks and Containers

■ 22. Amend § 261.1083 by:

■ a. Revising the first sentence of paragraph (d)(1);

■ b. Revising paragraph (d)(3);

■ c. Revising paragraph (d)(4);

■ d. Revising paragraph (d)(6); and

■ e. Revising the first sentence of paragraph (d)(7).

The revisions read as follows:

§ 261.1083 Material determination procedures.

* * * * *

(d) * * *

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A–7. * * *

* * * * *

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A–7, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A–7.

* * * * *

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A–7.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A–7. * * *

* * * * *

■ 23. Amend § 261.1089 by revising paragraph (a) to read as follows:

§ 261.1089 Recordkeeping requirements.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of this subpart shall record and maintain the information specified in paragraphs (b) through (h) of this section, as applicable to the facility.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 24. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938 and 6939g.

Subpart M—Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators

■ 25. Amend § 262.262 by:

■ a. Revising the first sentence of paragraph (a);

■ b. Revising paragraph (c); and

■ c. Adding paragraph (d).

The revisions and addition read as follows:

§ 262.262 Copies of contingency plan.

* * * * *

(a) The large quantity generator must submit a copy (either a paper or electronic copy, per the preference of the parties) of the contingency plan and all revisions to all local emergency responders (*i.e.,* police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services). * * *

* * * * *

(c) Generators must update, if necessary, the generator's quick reference guides, whenever the contingency plan is amended and submit these documents (either a paper or electronic copy, per the preference of the parties) to the local emergency responders identified at paragraph (a) of

this section or, as appropriate, the Local Emergency Planning Committee; and,

(d) Maintained away from fire and explosive hazards.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 26. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938, and 6939g.

Subpart A—General

■ 27. Amend § 263.12 by revising paragraph (a) to read as follows:

§ 263.12 Transfer facility requirements.

(a) A transporter who stores manifested shipments of hazardous waste in containers meeting the independent requirements of § 262.30 of this chapter at a transfer facility for a period of 14 consecutive calendar days or less is not subject to regulation under parts 264, 265, 267, 268, and 270 of this chapter with respect to the storage of those hazardous wastes.

* * * * *

Subpart B—Compliance With the Manifest System and Recordkeeping

■ 28. Amend § 263.20 by:

■ a. Revising the first sentence of paragraph (a)(6)(i); and

■ b. Revising after the italicized subject heading the first sentence of paragraph (a)(7).

The revisions read as follows:

§ 263.20 The manifest system.

(a) * * *

(6) * * *

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph (a)(4)(iii) of this section, or obtain and complete another paper manifest for this purpose. * * *

* * * * *

(7) * * * If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with paragraph (a)(4)(iii) of this section. * * *

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 29. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6939g.

Subpart A—General

■ 30. Amend § 264.1 by:

■ a. Revising the first sentence of paragraph (f)(3);

■ b. Revising paragraphs (g)(4) and (9).

The revisions read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(f) * * *

(3) To a person who treats, stores, or disposes of hazardous waste in a State which is authorized under subpart A or B of part 271 of this chapter if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at the person's facility which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. * * *

* * * * *

(g) * * *

(4) A farmer disposing of waste pesticides from the farmer's own use in compliance with § 262.70 of this chapter; or

* * * * *

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for a period of 14 consecutive calendar days or less.

* * * * *

■ 31. Amend § 264.3 by revising the introductory text to read as follows:

§ 264.3 Relationship to interim status standards.

A facility owner or operator who has fully complied with the requirements for interim status—as defined in section 3005(e) of RCRA and regulations under § 270.70 of this chapter—must comply with the regulations specified in part 265 of this chapter in lieu of the regulations in this part, until final administrative disposition of the owner's or operator's permit application is made, except as provided under 40 CFR part 264, subpart S.

* * * * *

Subpart B—General Facility Standards

■ 32. Amend § 264.12 by:

■ a. Revising the first sentence of paragraph (b); and

■ b. Revising the paragraph ''Comment:'' following paragraph (c).

The revisions read as follows:

§ 264.12 Required notices.

* * * * *

(b) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that the owner or operator of the receiving facility have the appropriate permit(s) for, and will accept, the waste the generator is shipping. * * *

(c) * * *

[*Comment:* An owner's or operator's failure to notify the new owner or operator of the requirements of this part in no way relieves the new owner or operator obligation to comply with all applicable requirements.]

■ 33. Amend § 264.13 by:

■ a. Revising the first sentence of paragraph (a)(1);

■ b. Revising the first and second sentences of paragraph (b) introductory text;

■ c. Revising paragraph (b)(7)(iii)(B) introductory text; and

■ d. Removing paragraphs (b)(7)(iii)(B)(*1*) and (*2*).

The revisions read as follows:

§ 264.13 General waste analysis.

(a) * * *

(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under § 264.113(d), the owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. * * *

* * * * *

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which the owner or operator will carry out to comply with paragraph (a) of this section. The owner or operator must keep this plan at the facility. * * *

* * * * *

(7) * * *

(iii) * * *

(B) Where no treatment standards have been established, such residues are prohibited from land disposal under § 268.32 or RCRA section 3004(d).

* * * * *

■ 34. Amend § 264.14 by revising paragraph (a) introductory text to read as follows:

§ 264.14 Security.

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility, *unless* the owner or operator can demonstrate to the Regional Administrator that:

* * * * *

■ 35. Amend § 264.15 by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (b)(2); and

■ c. Revising the second sentence of paragraph (d).

The revisions read as follows:

§ 264.15 General inspection requirements.

(a) The owner or operator must inspect the facility for malfunctions and deterioration, operator errors, and discharges which may be causing—or may lead to—

* * * * *

(b) * * *

(2) The owner or operator must keep this schedule at the facility.

* * * * *

(d) * * * The owner or operator must keep these records for at least three years from the date of inspection. * * *

■ 36. Amend § 264.18 by:

■ a. Adding paragraph (a)(3);

■ b. Revising paragraphs (b)(1) introductory text and (b)(1)(i);

■ c. Removing the paragraph ''Comment:'' following paragraph (b)(1)(ii)(D);

■ d. Removing the paragraph ''Comment:'' following paragraph (b)(2)(iii); and

■ e. Adding paragraph (b)(3).

The additions and revisions read as follows:

§ 264.18 Location standards.

(a) * * *

(3) Procedures for demonstrating compliance with this standard in Part B of the permit application are specified in § 270.14(b)(11).

(b) * * *

(1) A facility located in a 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a flood, *unless* the owner or operator can demonstrate to the Regional Administrator's satisfaction that:

(i) Procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters. The location where wastes are moved must be a facility which is either permitted by EPA under part 270 of this chapter, authorized to manage hazardous waste by a State with a hazardous waste management program authorized under part 271 of this chapter, or in interim status under parts 270 and 265 of this chapter; or

* * * * *

(3) Requirements pertaining to other Federal laws which affect the location and permitting of facilities are found in § 270.3 of this chapter. For details relative to these laws, see EPA's manual for SEA (special environmental area) requirements for hazardous waste facility permits. Though EPA is responsible for complying with these requirements, applicants should consider them in planning the location of a facility to help prevent subsequent project delays.

* * * * *

Subpart C—Preparedness and Prevention

■ 37. Amend § 264.32 by revising the introductory text to read as follows:

§ 264.32 Required equipment.

All facilities must be equipped with the following, *unless* it can be demonstrated to the Regional Administrator that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual hazardous waste treatment, storage or disposal area does not lend itself for safety reasons to have a particular kind of equipment specified in paragraphs (a)–(d) below. The facility owner or operator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies.

* * * * *

■ 38. Amend § 264.34 by revising paragraphs (a) and (b) to read as follows:

§ 264.34 Access to communications or alarm system.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (*e.g.,* direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Regional Administrator has ruled that such a device is not required under § 264.32.

(b) In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (*e.g.,* direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless the Regional Administrator has ruled that such a device is not required under § 264.32.

■ 39. Amend § 264.37 by revising paragraphs (a) and (b) to read as follows:

§ 264.37 Arrangements with local authorities.

(a) The owner or operator must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) The owner or operator attempting to make arrangements with their local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the owner or operator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the owner or operator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(b) The owner or operator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

Subpart D—Contingency Plan and Emergency Procedures

■ 40. Amend § 264.51 by:
■ a. Revising paragraph (a); and
■ b. Adding paragraph (c).

The revision and addition read as follows:

§ 264.51 Purpose and implementation of contingency plan.

(a) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

* * * * *

(c) The contingency plan must be submitted to the Regional Administrator with Part B of the permit application under part 270 of this chapter and, after approval or modification, will become a condition of any permit issued.

■ 41. Amend § 264.52 by:
■ a. Revising the first sentence of paragraph (b); and
■ b. Revising paragraphs (c) and (d).

The revisions read as follows:

§ 264.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. * * *

(c) The plan must describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, pursuant to § 264.37.

(d) The plan must list names, and emergency telephone numbers of all persons qualified to act as emergency coordinator (see § 264.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator, and others must be listed in the order in which they will assume responsibility as alternates. In situations where the facility has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position (*e.g.,* operations manager, shift coordinator, shift operations supervisor) as well as an emergency telephone number that can be guaranteed to be answered at all times. *For new facilities,* this information must be supplied to the Regional Administrator at the time of certification, rather than at the time of permit application.

* * * * *

■ 42. Amend § 264.53 by:
■ a. Revising the introductory text;
■ b. Revising paragraph (a); and
■ c. Removing the paragraph ''Comment:'' following paragraph (b).

The revisions read as follows:

§ 264.53 Copies of contingency plan.

A paper copy of the contingency plan and all revisions to the plan must be maintained at the facility and away from fire and explosive hazards; and

(a) The owner or operator must submit a copy (either a paper or electronic copy, per the preference of the parties) of the contingency plan and all revisions to all local emergency responders (*i.e.,* police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

* * * * *

■ 43. Amend § 264.56 by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising the second sentence to paragraph (b);
■ c. Revising paragraph (d) introductory text;
■ d. Revising paragraph (d)(1);
■ e. Revising the first sentence of paragraph (d)(2) introductory text;
■ f. Adding a second sentence to paragraph (g);
■ g. Removing the paragraph ''Comment:'' following paragraph (g); and
■ h. Revising the second sentence of paragraph (i) introductory text.

The revisions and additions read as follows:

§ 264.56 Emergency procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or a designee when the emergency coordinator is on call) must immediately:

* * * * *

(b) * * * The emergency coordinator may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis. * * *

* * * * *

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator must report the emergency coordinator's findings as follows:

(1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800–424–8802). * * *

* * * * *

(g) * * * Unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262, 263, and 264 of this chapter.

* * * * *

(i) * * * Within 15 days after the incident, the owner or operator must submit a written report on the incident to the Regional Administrator. * * *

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 44. Amend § 264.71 by:
■ a. Revising paragraph (a)(2) introductory text; and
■ b. Revising paragraph (b) introductory text.

The revisions read as follows:

§ 264.71 Use of manifest system.

(a) * * *

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or the owner's or operator's agent must:

* * * * *

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or the owner's or operator's agent, must:

* * * * *

■ 45. Amend § 264.73 by:

■ a. Revising paragraph (a);
■ b. Revising paragraphs (b)(3), (4), (6), and (7);
■ c. Revising the second sentence of paragraph (b)(8);
■ d. Revising paragraph (b)(9);
■ e. Revising the first sentence of paragraph (b)(10); and
■ f. Revising paragraphs (b)(11), (12), (13), (14), (15), (16), (17), and (18).

The revisions read as follows:

§ 264.73 Operating record.

(a) The owner or operator must keep a written operating record at the facility.

(b) * * *

(3) Records and results of waste analyses and waste determinations performed as specified in §§ 264.13, 264.17, 264.314, 264.341, 264.1034, 264.1063, 264.1083, 268.4(a), and 268.7 of this chapter;

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in § 264.56(i);

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252–264.254, 264.276, 264.278, 264.280, 264.302–264.304, 264.309, 264.602, 264.1034(c)–264.1034(f), 264.1035, 264.1063(d)–264.1063(i), 264.1064, and 264.1082 through 264.1090 of this part. Maintain in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup which must be maintained in the operating record until closure of the facility;

(7) For off-site facilities, notices to generators as specified in § 264.12(b);

(8) * * * This information must be maintained in the operating record until closure of the facility;

(9) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that the permittee generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment;

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, a petition pursuant to § 268.6 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. * * *

(11) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7;

(12) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7;

(13) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7;

(14) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under § 268.7, except for the manifest number, and the certification and demonstration if applicable;

(15) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7;

(16) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7;

(17) Any records required under § 264.1(j)(13);

(18) Monitoring, testing or analytical data where required by § 264.347 must be maintained in the operating record for five years; and

* * * * *

■ 46. Amend § 264.76 by revising paragraph (a)(6) to read as follows:

§ 264.76 Unmanifested waste report.

(a) * * *

(6) The certification signed by the owner or operator of the facility or the owner or operator's authorized representative; and,

* * * * *

■ 47. Amend § 264.77 by revising paragraph (a) to read as follows:

§ 264.77 Additional reports.

* * * * *

(a) Releases, fires, and explosions as specified in § 264.56(i);

* * * * *

Subpart F—Releases From Solid Waste Management Units

■ 48. Amend § 264.90 by revising paragraphs (b)(2) introductory text, (b)(5), and (f)(2) to read as follows:

§ 264.90 Applicability.

* * * * *

(b) * * *

(2) The owner or operator operates a unit which the Regional Administrator finds:

* * * * *

(5) The owner or operator designs and operates a pile in compliance with § 264.250(c).

* * * * *

(f) * * *

(2) It is not necessary to apply the groundwater monitoring and corrective action requirements of §§ 264.91 through 264.100 because the alternative requirements will protect human health and the environment.

■ 49. Amend § 264.93 by revising the first sentence of paragraph (b) introductory text to read as follows:

§ 264.93 Hazardous constituents.

* * * * *

(b) The Regional Administrator will exclude an appendix VIII constituent from the list of hazardous constituents specified in the facility permit if the Regional Administrator finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. * * *

* * * * *

■ 50. Amend § 264.94 by:
■ a. Revising paragraph (a)(2) introductory text;
■ b. Revising table 1 in paragraph (a)(2); and
■ c. Revising the first sentence of paragraph (b) introductory text.

The revisions read as follows:

§ 264.94 Concentration limits.

(a) * * *

(2) For any of the constituents listed in Table 1, must not exceed the respective value set by the National Primary Drinking Water Regulations found at 40 CFR part 141 as referenced in the table if the background level of the constituent is below that value in 40 CFR part 141. In the case that the constituent concentration can no longer be found at the referenced citation in Table 1, refer to the overall National Primary Drinking Water Regulations at 40 CFR part 141; or

TABLE 1—MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUND-WATER PROTECTION

Constituent	Concentration found at
Arsenic	§ 141.62(b).
Barium	§ 141.62(b).
Cadmium	§ 141.62(b).
Chromium	§ 141.62(b).
Lead	§ 141.80(c).
Mercury	§ 141.62(b).
Selenium	§ 141.62(b).
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy 1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	§ 141.61(c).
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	§ 141.61(c).
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	§ 141.61(c).
Toxaphene ($C_{10}H_{10}C_{16}$, Technical chlorinated camphene, 67–69 percent chlorine)	§ 141.61(c).
2,4–D (2,4-Dichlorophenoxyacetic acid)	§ 141.61(c).
2,4,5–TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	§ 141.61(c).

* * * * *

(b) The Regional Administrator will establish an alternate concentration limit for a hazardous constituent if the Regional Administrator finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. * * *

* * * * *

■ 51. Amend § 264.98 by revising paragraph (g)(6)(i) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(g) * * *

(6) * * *

(i) Notify the Regional Administrator in writing within seven days of determining statistically significant evidence of contamination at the compliance point that the owner or operator intends to make a demonstration under this paragraph;

* * * * *

■ 52. Amend § 264.99 by revising paragraphs (i)(1) and (j) to read as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(i) * * *

(1) Notify the Regional Administrator in writing within seven days that the owner or operator intends to make a demonstration under this paragraph;

* * * * *

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, the owner or operator must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

■ 53. Amend § 264.100 by:

■ a. Revising the second and third sentences of paragraph (f); and

■ b. Revising paragraph (h).

The revisions read as follows:

§ 264.100 Corrective action program.

* * * * *

(f) * * * If the owner or operator is conducting corrective action at the end of the compliance period, the owner or operator must continue that corrective action for as long as necessary to achieve compliance with the ground-water protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if the owner or operator can demonstrate, based on data from the ground-water monitoring program under paragraph (d) of this section, that the ground-water protection standard of § 264.92 has not been exceeded for a period of three consecutive years.

* * * * *

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, the owner or operator must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

Subpart G—Closure and Post-Closure

■ 54. Amend § 264.112 by:

■ a. Revising paragraph (c)(2)(iii);

■ b. Revising paragraph (d)(1);

■ c. Revising paragraph (d)(2) introductory text;

■ d. Revising the second sentence of paragraph (d)(2)(i); and

■ e. Revising the second sentence of paragraph (d)(2)(ii).

The revisions read as follows:

§ 264.112 Closure plan; amendment of plan.

* * * * *

(c) * * *

(2) * * *

(iii) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan, or

* * * * *

(d) * * *

(1) The owner or operator must notify the Regional Administrator in writing at least 60 days prior to the date on which the owner or operator expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Regional Administrator in writing at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner or operator must notify the Regional Administrator in writing at least 45 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.

(2) The date when the owner or operator ''expects to begin closure'' must be either:

(i) * * * If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and the owner or operator has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) * * * If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment, including

compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

■ 55. Amend § 264.113 by:
■ a. Revising paragraph (a)(1)(ii)(B);
■ b. Revising paragraph (a)(2);
■ c. Revising paragraph (b)(1)(ii)(B);
■ d. Revising paragraph (b)(2);
■ e. Revising paragraph (e)(7) introductory text; and
■ f. Revising the first sentence of paragraph (e)(7)(iv).

The revisions read as follows:

§ 264.113 Closure; time allowed for closure.

(a) * * *

(1) * * *

(ii) * * *

(B) There is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

* * * * *

(2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

(b) * * *

(1) * * *

(ii) * * *

(B) There is reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

* * * * *

(2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

* * * * *

(e) * * *

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section the Regional Administrator shall:

* * * * *

(iv) If the Regional Administrator receives written comments on the decision, the Regional Administrator shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. * * *

* * * * *

■ 56. Amend § 264.115 by revising the last sentence to read as follows:

§ 264.115 Certification of closure.

* * * Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until the Regional Administrator releases the owner or operator from the financial assurance requirements for closure under § 264.143(i).

■ 57. Amend § 264.117 by revising paragraph (a)(2) to read as follows:

§ 264.117 Post-closure care and use of property.

(a) * * *

(2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Regional Administrator may, in accordance with the permit modification procedures in parts 124 and 270:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Regional Administrator finds that the reduced period is sufficient to protect human health and the environment (*e.g.,* leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility if the Regional Administrator finds that the extended period is necessary to protect human health and the environment (*e.g.,* leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

* * * * *

■ 58. Amend § 264.119 by:
■ a. Revising paragraph (a);
■ b. Revising paragraph (b)(2); and
■ c. Revising the first and fourth sentences of paragraph (c) introductory text.

The revisions read as follows:

§ 264.119 Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of the owner's or operator's knowledge and in accordance with any records the owner or operator has kept.

(b) * * *

(2) Submit a certification signed by the owner or operator that the owner or operator has recorded the notation specified in paragraph (b)(1) of this section, including a copy of the document in which the notation has been placed, to the Regional Administrator.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, the owner or operator must request a modification to the post-closure permit in accordance with the applicable requirements in parts 124 and 270. * * * If the owner or operator is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Regional Administrator approve either:

* * * * *

■ 59. Amend § 264.120 by revising the last sentence to read as follows:

§ 264.120 Certification of completion of post-closure care.

* * * Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until the Regional Administrator releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart H—Financial Requirements

■ 60. Amend § 264.142 by:
■ a. Revising the fourth sentence of paragraph (a)(2); and
■ b. Revising paragraph (b) introductory text.

The revisions read as follows:

§ 264.142 Cost estimate for closure.

(a) * * *

(2) * * * The owner or operator may use costs for on-site disposal if the owner or operator can demonstrate that

on-site disposal capacity will exist at all times over the life of the facility.

* * * * *

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 264.143(f)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product or Gross Domestic Product published by the U.S. Department of Commerce in its *Survey of Current Business,* as specified in paragraphs (b)(1) and (2) of this section. The owner or operator must use the selected Gross National Product or Gross Domestic Product Implicit Price Deflator consistently for each subsequent inflation update. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

■ 61. Amend § 264.143 by:
■ a. Revising the second sentence of the introductory text;
■ b. Revising paragraph (a)(4), (5), and (8);
■ c. Revising the fourth and fifth sentences of paragraph (a)(10);
■ d. Revising paragraph (b)(9);
■ e. Revising the fourth and fifth sentences of paragraph (e)(5);
■ f. Revising paragraph (e)(10) introductory text;
■ g. Revising the first sentence of paragraph (f)(1) introductory text;
■ h. Revising paragraph (f)(1)(ii)(A);
■ i. Revising paragraphs (f)(3) introductory text, (f)(3)(iii) introductory text, (f)(3)(iii)(A), and (f)(3)(iii)(B);
■ j. Revising the first sentence of paragraph (f)(6);
■ k. Revising the first sentence of paragraph (f)(8);
■ l. Revising the fifth sentence of paragraph (g); and
■ m. Revising paragraph (i).

The revisions read as follows:

§ 264.143 Financial assurance for closure.

* * * The owner or operator must choose from the options as specified in paragraphs (a) through (f) of this section.

(a) * * *

(4) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this section or in § 265.143 of this chapter, the owner's or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph and § 265.143(a) of this chapter, as applicable.

* * * * *

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the current closure cost estimate covered by the trust fund.

* * * * *

(10) * * * If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the Regional Administrator may withhold reimbursements of such amounts as the Regional Administrator deems prudent until the Regional Administrator determines, in accordance with § 264.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the trustee to make such reimbursements, the Regional Administrator will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) * * *

(9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on the receipt of evidence of alternate financial assurance as specified in this section.

* * * * *

(e) * * *

(5) * * * If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the Regional Administrator may withhold reimbursements of such amounts as the Regional Administrator deem prudent until the Regional Administrator determine, in accordance with § 264.143(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, the Regional Administrator will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(10) The Regional Administrator will give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

* * * * *

(f) * * *

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. * * *

* * * * *

(ii) * * *

(A) A current rating for the owner's or operator's most recent bond issuance of BBB- or better as issued by Standard and Poor's or Baa3 or better as issued by Moody's; and

* * * * *

(3) To demonstrate that the owner or operator meets this test, the owner or operator must submit the following items to the Regional Administrator:

* * * * *

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator including:

(A) A statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, a description of the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. * * *

* * * * *

(8) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). * * *

* * * * *

(g) * * * If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. * * *

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

■ 62. Amend § 264.144 by revising paragraph (b) introductory text to read as follows:

§ 264.144 Cost estimate for post-closure care.

* * * * *

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.145. For owners and operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 264.143(f)(5). The adjustment may be made by recalculating the post-closure costs estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product or Gross Domestic Product published by the U.S. Department of Commerce in its *Survey of Current Business,* as specified in paragraphs (b)(1) and (2) of this section. The owner or operator must use the selected Gross National Product or Gross Domestic Product Implicit Price Deflator consistently for each subsequent inflation update. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

■ 63. Amend § 264.145 by:

■ a. Revising the second sentence of the introductory text;

■ b. Revising paragraphs (a)(4) and (5);

■ c. Revising paragraph (a)(8);

■ d. Revising the third sentence of paragraph (a)(11);

■ e. Revising paragraph (b)(9);

■ f. Revising the third sentence of paragraph (e)(5);

■ g. Revising paragraph (e)(11) introductory text;

■ h. Revising the first sentence of paragraph (f)(1) introductory text;

■ i. Revising paragraph (f)(1)(i)(D);

■ j. Revising paragraphs (f)(1)(ii)(A), and (f)(1)(ii)(D);

■ k. Revising paragraph (f)(3) introductory text;

■ l. Revising paragraphs (f)(3)(iii) introductory text, (f)(3)(iii)(A), and (f)(3)(iii)(B);

■ m. Revising the first sentence of paragraph (f)(6);

■ n. Revising the first sentence of paragraph (f)(8);

■ o. Revising after the italicized subject heading the fourth sentence of paragraph (g); and

■ p. Revising paragraph (i).

The revisions read as follows:

§ 264.145 Financial Assurance for post-closure care.

* * * The owner or operator must choose from the following options:

(a) * * *

(4) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(3) of this section.

(5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this section or in § 265.145 of this chapter, the owner's or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph and § 265.145(a) of this chapter, as applicable.

* * * * *

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

* * * * *

(11) * * * If the Regional Administrator does not instruct the trustee to make such reimbursements, the Regional Administrator will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) * * *

(9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on the Regional Administrator's receipt of evidence of alternate financial assurance as specified in this section.

* * * * *

(e) * * *

(5) * * * If the Regional Administrator does not instruct the insurer to make such reimbursements, the Regional Administrator will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(11) The Regional Administrator will give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

* * * * *

(f) * * *

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. * * *

(i) * * *

(D) Assets in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(A) A current rating for the owner's or operator's most recent bond issuance of BBB- or better as issued by Standard and Poor's or Baa3 or better as issued by Moody's; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(3) To demonstrate that the owner or operator meets this test, the owner or

operator must submit the following items to the Regional Administrator:

* * * * *

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator including:

(A) A statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, a description of the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. * * *

* * * * *

(8) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). * * *

* * * * *

(g) * * * If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. * * *

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator that the owner or operator is no longer required to maintain financial assurance for post-closure of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

■ 64. Amend § 264.147 by:

■ a. Revising after the italicized subject heading the third sentence of paragraph (d);

■ b. Revising after the italicized subject heading the first sentence of paragraph (e);

■ c. Revising the first sentence of paragraph (f)(1) introductory text;

■ d. Revising paragraph (f)(1)(i)(C)(*1*);

■ e. Revising paragraphs (f)(1)(ii)(A) and (f)(1)(ii)(D)(*1*);

■ f. Revising paragraph (f)(3) introductory text;

■ g. Revising the second sentence of paragraph (f)(3)(i);

■ h. Revising paragraphs (f)(3)(iii) introductory text, (f)(3)(iii)(A), and (f)(3)(iii)(B);

■ i. Revising the first sentence of paragraph (f)(6); and

■ j. Revising the first sentence of paragraph (f)(7).

The revisions read as follows:

§ 264.147 Liability requirements.

* * * * *

(d) * * * In addition, if the Regional Administrator determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the Regional Administrator may require that an owner or operator of the facility comply with paragraph (b) of this section. * * *

(e) * * * Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner and operator are no longer required by this section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

(f) * * *

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. * * *

(i) * * *

(C) * * *

(*1*) At least 90 percent of the owner or operator seeking to pass the financial test's total assets; or

* * * * *

(ii) * * *

(A) A current rating for the owner's or operator's most recent bond issuance of BBB- or better as issued by Standard and Poor's, or Baa3 or better as issued by Moody's; and

* * * * *

(D) * * *

(*1*) At least 90 percent of the owner or operator seeking to pass the financial test's total assets; or

* * * * *

(3) To demonstrate that the owner or operator meets this test, the owner or operator must submit the following three items to the Regional Administrator:

(i) * * * If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§ 264.143(f), 264.145(f), 265.143(e), and 265.145(e), and liability coverage, the owner or operator must submit the letter specified in § 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in § 264.151(f) is not required.

* * * * *

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator including:

(A) A statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, a description of the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. * * *

(7) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). * * *

* * * * *

■ 65. Amend § 264.148 by revising the second sentence of paragraph (a) to read as follows:

§ 264.148 Incapacity of owners or operators, guarantors, or financial institutions.

(a) * * * A guarantor of a corporate guarantee as specified in §§ 264.143(f) and 264.145(f) must make such a notification if the guarantor is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

* * * * *

■ 66. Amend § 264.149 by revising the second and fifth sentences of paragraph (a)(2) to read as follows:

§ 264.149 Use of State-required mechanisms.

(a) * * *

(2) * * * The Regional Administrator may also consider other factors as the Regional Administrator deems appropriate. * * * The Regional Administrator will notify the owner or operator of the determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. * * *

* * * * *

■ 67. Amend § 264.150 by revising the second and fifth sentences of paragraph (a)(2) to read as follows:

§ 264.150 State assumption of responsibility.

(a) * * *

(2) * * * The Regional Administrator may also consider other factors as the Regional Administrator deems appropriate. * * * The Regional Administrator will notify the owner or operator of the determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. * * *

* * * * *

■ 68. Amend § 264.151 by:

■ a. In paragraph (a)(1), revising the first sentence in the section ''Trust Agreement'';

■ b. In paragraph (b), revising the fourth entry in the section ''Financial Guarantee Bond'';

■ c. In paragraph (c), revising the fourth entry in the section ''Performance Bond'';

■ d. In paragraph (d), revising the last sentence in the section ''Irrevocable Standby Letter of Credit'';

■ e. In paragraph (k), revising the last sentence in the section ''Certificate of Valid Claim''; and

■ f. In paragraph (m)(1), revising the first sentence in the section ''Trust Agreement''.

The revisions read as follows:

§ 264.151 Wording of the instruments.

(a) * * *

(1) * * *

Trust Agreement

Trust Agreement, the ''Agreement,'' entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert ''corporation,'' ''partnership,'' ''association,'' ''limited liability company,'' or ''proprietorship''], the ''Grantor,'' and [name of corporate trustee], [insert ''incorporated in the State of____'' or ''a national bank''], the ''Trustee.''

* * * * *

(b) * * *

Financial Guarantee Bond

* * * * *

Type of organization: [insert ''individual,'' ''joint venture,'' ''partnership,'' ''limited liability company,'' or ''corporation'']

* * * * *

(c) * * *

Performance Bond

* * * * *

Type of organization: [insert ''individual,'' ''joint venture,'' ''partnership,'' ''limited liability company,'' or ''corporation'']

* * * * *

(d) * * *

Irrevocable Standby Letter of Credit

* * * * *

This credit is subject to [insert ''the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,'' ''the most recent edition of the International Standby Practices as published and copyrighted by the International Chamber of Commerce,'' or ''the Uniform Commercial Code'']. * * * * *

(k) * * *

Certificate of Valid Claim

* * * * *

This credit is subject to [insert ''the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,'' ''the most recent edition of the International Standby Practices, published and copyrighted by the International Chamber of Commerce,'' or ''the Uniform Commercial Code'']. * * * * *

(m) * * *

(1) * * *

Trust Agreement

Trust Agreement, the ''Agreement,'' entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert ''corporation,'' ''partnership,'' ''association,'' ''limited liability company,'' or ''proprietorship''], the ''Grantor,'' and [name of corporate trustee], [insert, ''incorporated in the State of____'' or ''a national bank''], the ''trustee.''

* * * * *

Subpart J—Tank Systems

■ 69. Amend § 264.193 by revising paragraph (h)(1) introductory text to read as follows:

§ 264.193 Containment and detection of releases.

* * * * *

(h) * * *

(1) The Regional Administrator must be notified in writing by the owner or operator that the owner or operator intends to conduct and submit a demonstration for a variance from secondary containment as allowed in paragraph (g) of this section according to the following schedule:

* * * * *

■ 70. Amend § 264.195 by revising the first sentence of the note to paragraph (b) to read as follows:

§ 264.195 Inspections.

* * * * *

(b) * * *

Note: Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction the owner or operator finds. * * *

* * * * *

Subpart L—Waste Piles

■ 71. Amend § 264.258 by revising paragraph (b) to read as follows:

§ 264.258 Closure and post-closure care.

* * * * *

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 264.310).

* * * * *

Subpart M—Land Treatment

■ 72. Amend § 264.272 by revising the second sentence of paragraph (b) to read as follows:

§ 264.272 Treatment demonstration.

* * * * *

(b) * * * If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under paragraph (a) of this section, the owner or operator must obtain a treatment or disposal permit under § 270.63. * * *

* * * * *

■ 73. Amend § 264.276 by revising paragraph (a)(4) to read as follows:

§ 264.276 Food-chain crops.

* * * * *

(a) * * *

(4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, the owner or operator must obtain a permit for conducting such activities.

* * * * *

■ 74. Amend § 264.278 by:

■ a. Revising the third sentence of paragraph (a)(2);

■ b. Revising paragraph (f) introductory text;

■ c. Revising the second sentence of paragraph (f)(3) introductory text;

■ d. Revising paragraph (g) introductory text;

■ e. Revising the first and second sentences of paragraph (h) introductory text; and

■ f. Revising paragraph (h)(1).

The revisions read as follows:

§ 264.278 Unsaturated zone monitoring.

* * * * *

(a) * * *

(2) * * * The Regional Administrator will establish PHCs if the Regional Administration finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment at at least equivalent levels for the other hazardous constituents in the wastes.

* * * * *

(f) The owner or operator must determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under paragraph (a) of this section below the treatment zone each time the owner or operator conducts soil monitoring and soil-pore liquid monitoring under paragraph (d) of this section.

* * * * *

(3) * * * The Regional Administrator will specify a statistical procedure in the facility permit that the Regional Administrator finds:

* * * * *

(g) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, the owner or operator must:

* * * * *

(h) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, the owner or operator may demonstrate that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(2) of this section, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(2) of this section unless the demonstration made under this paragraph successfully shows that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. * * *

(1) Notify the Regional Administrator in writing within seven days of determining a statistically significant increase below the treatment zone that the owner or operator intends to make a determination under this paragraph;

* * * * *

■ 75. Amend § 264.280 by revising paragraph (c)(7) to read as follows:

§ 264.280 Closure and post-closure care.

* * * * *

(c) * * *

(7) Continue unsaturated zone monitoring in compliance with § 264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

* * * * *

Subpart O—Incinerators

■ 76. Amend § 264.341 by revising paragraph (b) to read as follows:

§ 264.341 Waste analysis.

* * * * *

(b) Throughout normal operation the owner or operator must conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in the permit (under § 264.345(b)).

■ 77. Amend § 264.344 by revising paragraph (a) introductory text to read as follows:

§ 264.344 Hazardous waste incinerator permits.

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in the permit and only under operating conditions specified for those wastes under § 264.345, except:

* * * * *

Subpart W—Drip Pads

■ 78. Amend § 264.570 by revising paragraph (a) to read as follows:

§ 264.570 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. The requirement at § 264.573(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

* * * * *

§ 264.571 [Removed and Reserved]

■ 79. Remove and reserve § 264.571.

■ 80. Amend § 264.572 by revising the section heading and the introductory text to read as follows:

§ 264.572 Design and installation of drip pads.

Owners or operators of drip pads constructed prior to December 6, 1990, and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990, that need to upgrade, repair, or modify their drip pad to comply with 264.573(b) must develop and submit a written plan to the Regional Administrator 2 years prior to completion of the upgrade. The plan must document compliance with 264.573. Upon completion of upgrades, repairs, and modifications, owners and operators must submit to the Regional Administrator or state Director, as-built drawings and a certification by a Qualified Professional Engineer attesting that the drip pad conforms to the drawings. Owners and operators of any drip pads (regardless of construction date) must ensure that the pads are designed, installed, and

operated in accordance with one of the following:

* * * * *

■ 81. Amend § 264.573 by revising paragraph (a)(4)(i) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4) * * *

(i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, *e.g.,* concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to those drip pads for which the owner or operator elects to comply with § 264.572(b) instead of § 264.572(a).

* * * * *

■ 82. Amend § 264.575 by:

■ a. Revising the first sentence of paragraph (b); and

■ b. Revising paragraph (c)(1) introductory text.

The revisions read as follows:

§ 264.575 Closure.

* * * * *

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 264.310). * * *

(c) * * *

(1) The owner or operator of a drip pad that was built before December 6, 1990, and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990, that does not comply with the liner requirements of § 264.573(b)(1) must:

* * * * *

Subpart X—Miscellaneous Units

■ 83. Amend subpart X by revising the source citation to read as follows:

Source: 52 FR 46946, Dec. 10, 1987, unless otherwise noted.

■ 84. Amend § 264.600 by:

■ a. Revising the introductory text; and

■ b. Revising the FR citation.

The revisions read as follows:

§ 264.600 Applicability.

The requirements in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units, except as § 264.1 provides otherwise.

[52 FR 46946, Dec. 10, 1987, as amended at 71 FR 40274, July 14, 2006]

Subpart AA—Air Emission Standards for Process Vents

■ 85. Amend § 264.1034 by revising paragraph (b)(1) to read as follows:

§ 264.1034 Test methods and procedures.

* * * * *

(b) * * *

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60, appendix A–7.

* * * * *

■ 86. Amend § 264.1035 by revising paragraph (c)(10)(iv) to read as follows:

§ 264.1035 Recordkeeping requirements.

* * * * *

(c) * * *

(10) * * *

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A–7 after it is successfully repaired or determined to be nonrepairable.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

■ 87. Amend § 264.1063 by:

■ a. Revising paragraph (b)(1); and

■ b. Revising paragraph (d) introductory text.

The revisions read as follows:

§ 264.1063 Test methods and procedures.

* * * * *

(b) * * *

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60, appendix A–7.

* * * * *

(d) An owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the methods described in (1), (2), and (3) below. This determination shall also be made in accordance with the waste analysis plan required by § 264.13(b) or § 268.7(a)(5), if applicable.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 264.1080 [Amended]

■ 88. Amend § 264.1080 by removing and reserving paragraphs (f) and (g).

Subpart DD—Containment Buildings

■ 89. Amend § 264.1102 by revising the first sentence of paragraph (b) to read as follows:

§ 264.1102 Closure and post-closure care.

* * * * *

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310). * * *

■ 90. Amend Appendix I to Part 264 by revising the first sentence of the introductory text to read as follows:

Appendix I to Part 264—Recordkeeping Instructions

The recordkeeping provisions of § 264.73 specify that an owner or operator must keep a written operating record at the facility.

* * *

* * * * *

■ 91. Amend appendix V to part 264 by revising the second sentence of the third paragraph in the introductory text to read as follows:

Appendix V to Part 264—Examples of Potentially Incompatible Waste

* * * * *

* * * An owner or operator must, as the regulations require, adequately analyze the owner's or operator's wastes so that the owner or operator can avoid creating uncontrolled substances or reactions of the type listed below, whether the wastes are listed below or not.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

■ 92. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

Subpart A—General

■ 93. Amend § 265.1 by:
■ a. Revising the first sentence of paragraph (c)(4)(ii); and
■ b. Revising paragraphs (c)(8) and (12).
The revisions read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(4) * * *

(ii) To a person who treats, stores, or disposes of hazardous waste in a State authorized under subpart A or B of part 271 of this chapter if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at the person's facility which are imposed pursuant to the Hazardous and Solid Waste Act Amendments of 1984. * * *

* * * * *

(8) A farmer disposing of waste pesticides from the farmer's own use in compliance with § 262.70 of this chapter; or

* * * * *

(12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for a period of 14 consecutive calendar days or less.

* * * * *

Subpart B—General Facility Standards

■ 94. Amend § 265.12 by revising the paragraph ''Comment:'' following paragraph (b) to read as follows:

§ 265.12 Required notices.

* * * * *

(b) * * *

[*Comment:* An owner's or operator's failure to notify the new owner or operator of the requirements of this part in no way relieves the new owner or operator obligation to comply with all applicable requirements.]

■ 95. Amend § 265.13 by:
■ a. Revising the first sentence of paragraph (a)(1);
■ b. Revising the first and second sentences of paragraph (b) introductory text;
■ c. Revising paragraph (b)(7)(iii)(B) introductory text; and
■ d. Removing and reserving paragraphs (b)(7)(iii)(B)(*1*) and (*2*).
The revisions read as follows:

§ 265.13 General waste analysis

(a) * * *

(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under § 265.113(d), the owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. * * *

* * * * *

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which the owner or operator will carry out to comply with paragraph (a) of this section. The owner or operator must keep this plan at the facility. * * *

* * * * *

(7) * * *

(iii) * * *

(B) Where no treatment standards have been established such residues are prohibited from land disposal under § 268.32 or RCRA section 3004(d).

* * * * *

■ 96. Amend § 265.14 by revising paragraph (a) introductory text to read as follows:

§ 265.14 Security.

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the owner or operator's facility, *unless:*

* * * * *

■ 97. Amend § 265.15 by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraph (b)(2); and
■ c. Revising the second sentence of paragraph (d).
The revisions read as follows:

§ 265.15 General inspection requirements.

(a) The owner or operator must inspect the facility for malfunctions and deterioration, operator errors, and discharges which may be causing—or may lead to:

* * * * *

(b) * * *

(2) The owner or operator must keep this schedule at the facility.

* * * * *

(d) * * * The owner or operator must keep these records for at least three years from the date of inspection. * * *

■ 98. Amend § 265.32 by revising the introductory text to read as follows:

§ 265.32 Required equipment.

All facilities must be equipped with the following, *unless* it can be demonstrated to the Regional Administrator that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual hazardous waste treatment, storage or disposal area does not lend itself for safety reasons to have a particular kind of equipment specified in paragraphs (a)–(d) below. The facility owner or operator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies.

* * * * *

■ 99. Amend § 265.34 by revising paragraphs (a) and (b) to read as follows:

§ 265.34 Access to communications or alarm system.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (*e.g.,* direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under § 265.32.

(b) In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (*e.g.,* direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under § 265.32.

■ 100. Amend § 265.37 by:
■ a. Revising paragraphs (a) introductory text, (a)(1), (2), and (3);
■ b. Removing paragraph (a)(4); and
■ c. Revising paragraph (b).
The revisions read as follows:

§ 265.37 Arrangements with local authorities.

(a) The owner or operator must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) The owner or operator attempting to make arrangements with the local fire

department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the owner or operator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the owner or operator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(b) The owner or operator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

Subpart D—Contingency Plan and Emergency Procedures

■ 101. Amend § 265.51 by revising paragraph (a) to read as follows:

§ 265.51 Purpose and implementation of contingency plan.

(a) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

* * * * *

■ 102. Amend § 265.52 by:
■ a. Revising the first sentence of paragraph (b); and
■ b. Revising paragraphs (c) and (d).

The revisions read as follows:

§ 265.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with Part 112 of this chapter, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. * * *

(c) The plan must describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, pursuant to § 265.37.

(d) The plan must list names, and emergency telephone numbers of all persons qualified to act as emergency coordinator (see § 265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator, and others must be listed in the order in which they will assume responsibility as alternates. In situations where the facility has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position (*e.g.,* operations manager, shift coordinator, shift operations supervisor) as well as an emergency telephone number that can be guaranteed to be answered at all times.

* * * * *

■ 103. Revise § 265.53 to read as follows:

§ 265.53 Copies of contingency plan.

A paper copy of the contingency plan and all revisions to the plan must be maintained at the facility and away from fire and explosive hazards; and

(a) The owner or operator must submit a copy (either a paper or electronic copy, per the preference of the parties) of the contingency plan and all revisions to all local emergency responders (*i.e.,* police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

* * * * *

■ 104. Amend § 265.56 by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising the second sentence to paragraph (b);
■ c. Revising paragraphs (d) introductory text and (d)(1);
■ d. Revising the first sentence of paragraph (d)(2) introductory text;
■ e. Adding a second sentence of paragraph (g) and removing the paragraph ''Comment:'' following paragraph (g); and
■ f. Revising the second sentence of paragraph (i) introductory text;

The revisions and addition read as follows:

§ 265.56 Emergency procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or a designee when the emergency coordinator is on call) must immediately:

* * * * *

(b) * * * The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

* * * * *

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator must report the findings as follows:

(1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using the 24-hour toll free number 800–424–8802). * * *

* * * * *

(g) * * * Unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262, 263, and 265 of this chapter.

* * * * *

(i) * * * Within 15 days after the incident, the owner or operator must submit a written report on the incident to the Regional Administrator. * * *

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 105. Amend § 265.71 by revising paragraphs (a)(2) introductory text and (b) introductory text to read as follows:

§ 265.71 Use of manifest system.

(a) * * *

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or the owner's or operator's agent must:

* * * * *

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or the owner's or operator's agent, must:

* * * * *

■ 106. Amend § 265.73 by:

■ a. Revising paragraph (a); and

■ b. Revising paragraphs (b)(3), (4), (6) introductory text, (8), (9), (10), (11), (12), (13), and (14).

The revisions read as follows:

§ 265.73 Operating record.

(a) The owner or operator must keep a written operating record at the facility.

(b) * * *

(3) Records and results of waste analysis, waste determinations, and trial tests performed as specified in §§ 265.13, 265.200, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034, 265.1063, 265.1084, 268.4(a), and 268.7 of this chapter;

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in § 265.56(i);

* * * * *

(6) Monitoring, testing or analytical, and corrective action data where required by subpart F of this part and by §§ 265.19, 265.94, 265.191, 265.193, 265.195, 265.224, 265.226, 265.255, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302, 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this part. Maintain in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility.

* * * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, monitoring data required pursuant to a petition under § 268.6 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. All of this information must be maintained in the operating record until closure of the facility.

(9) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7;

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7;

(11) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7;

(12) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7.

(13) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7; and

(14) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7.

* * * * *

■ 107. Amend § 265.76 by revising paragraph (a)(6) to read as follows:

§ 265.76 Unmanifested waste report.

(a) * * *

(6) The certification signed by the owner or operator of the facility or the owner or operator's authorized representative; and

* * * * *

■ 108. Amend § 265.77 by revising paragraph (a) to read as follows:

§ 265.77 Additional reports.

* * * * *

(a) Releases, fires, and explosions as specified in § 265.56(i);

* * * * *

Subpart F—Ground—Water Monitoring

■ 109. Amend § 265.90 by revising paragraph (d) introductory text to read as follows:

§ 265.90 Applicability.

* * * * *

(d) If an owner or operator assumes (or knows) that ground-water monitoring of indicator parameters in accordance with §§ 265.91 and 265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under § 265.93(b), the owner or operator may install, operate, and maintain an alternate ground-water monitoring system (other than the one described in §§ 265.91 and 265.92). If the owner or operator decides to use an alternate ground-water monitoring system the owner or operator must:

* * * * *

■ 110. Amend § 265.92 by:

■ a. Revising the third sentence of paragraph (a) introductory text;

■ b. Revising the paragraph ''Comment:'' following paragraph (a)(4); and

■ c. Revising the second sentence of paragraph (c)(1).

The revisions read as follows:

§ 265.92 Sampling and analysis.

(a) * * * The owner or operator must keep this plan at the facility. * * *

* * * * *

(4) * * *

[*Comment:* Refer to ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW–846)'' for discussions of recommended sampling and analysis procedures.]

* * * * *

(c) * * *

(1) * * * The owner or operator must do this quarterly for one year.

* * * * *

■ 111. Amend § 265.93 by:

■ a. Revising the first sentence of paragraph (d)(5); and

■ b. Revising paragraph (d)(6).

The revisions read as follows:

§ 265.93 Preparation, evaluation, and response.

* * * * *

(d) * * *

(5) The owner or operator must make the first determination under paragraph (d)(4) of this section, as soon as technically feasible, and prepare a report containing an assessment of ground-water quality. * * *

(6) If the owner or operator determines, based on the results of the first determination under paragraph (d)(4) of this section, that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, then the owner or operator may reinstate the indicator evaluation program described in § 265.92 and paragraph (b) of this section. If the owner or operator reinstates the indicator evaluation program, the owner or operator must so

notify the Regional Administrator in the report submitted under paragraph (d)(5) of this section.

* * * * *

■ 112. Amend § 265.94 by revising the second sentence of paragraph (a)(2)(i) to read as follows:

§ 265.94 Recordkeeping and reporting.

(a) * * *

(2) * * *

(i) * * * The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels specified in appendix III.

* * * * *

Subpart G—Closure and Post-Closure

■ 113. Amend § 265.112 by:
■ a. Revising paragraph (c)(1)(iii);
■ b. Revising paragraph (d)(1);
■ c. Revising paragraph (d)(2) introductory text;
■ d. Revising the second sentence of paragraph (d)(2)(i);
■ e. Revising the second sentence of paragraph (d)(2)(ii);
■ f. Revising paragraph (d)(3) introductory text;
■ g. Revising the second and sixth sentences of paragraph (d)(4); and
■ h. Revising the FR citation following paragraph (e).

The revisions read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(c) * * *

(1) * * *

(iii) In conducting partial or final closure activities, unexpected events require a modification of the closure plan, or

* * * * *

(d) * * *

(1) The owner or operator must submit the closure plan to the Regional Administrator at least 180 days prior to the date on which the owner or operator expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the Regional Administrator at least 45 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace. The owner or operator must submit the closure plan to the Regional Administrator at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the Regional Administrator in writing at least 60 days prior to the date on which the owners or operators expect to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. Owners or operators with approved closure plans must notify the Regional Administrator in writing at least 45 days prior to the date on which the owners or operators expect to begin partial or final closure of a boiler or industrial furnace. Owners or operators with approved closure plans must notify the Regional Administrator in writing at least 45 days prior to the date on which the owners or operators expect to begin final closure of a facility with only tanks, container storage, or incinerator units.

(2) The date when the owner or operator ''expects to begin closure'' must be either:

(i) * * * If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) * * * If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

(3) The owner or operator must submit the closure plan to the Regional Administrator no later than 15 days after:

* * * * *

(4) * * * The Regional Administrator will also, in response to a request or at the Regional Administrator's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. * * * If the Regional Administrator does not approve the plan, the Regional Administrator shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. * * *

* * * * *

[51 FR 16451, May 2, 1986, as amended at 53 FR 37935, Sept. 28, 1988; 56 FR 7207, Feb. 21, 1991; 56 FR 42512, Aug. 27, 1991; 57 FR 37267, Aug. 18, 1992; 63 FR 56734, Oct. 22, 1998; 71 FR 40275, July 14, 2006]

■ 114. Amend § 265.113 by:
■ a. Revising paragraph (a)(1)(ii)(B);
■ b. Revising paragraph (a)(2);
■ c. Revising paragraph (b)(1)(ii)(B);
■ d. Revising paragraph (b)(2);
■ e. Revising paragraph (e)(7) introductory text;
■ f. Revising the first sentence of paragraph (e)(7)(iv).

The revisions read as follows:

§ 265.113 Closure; time allowed for closure.

(a) * * *

(1) * * *

(ii) * * *

(B) There is a reasonable likelihood that the owner or operator, or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

* * * * *

(2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) * * *

(1) * * *

(ii) * * *

(B) There is reasonable likelihood that the owner or operator, or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

* * * * *

(2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

* * * * *

(e) * * *

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section the Regional Administrator shall:

* * * * *

(iv) If the Regional Administrator receives written comments on the decision, the Regional Administrator shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. * * *

* * * * *

■ 115. Amend § 265.115 by revising the last sentence to read as follows:

§ 265.115 Certification of closure.

* * * Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until the Regional Administrator releases the owner or operator from the financial assurance requirements for closure under § 265.143(h).

■ 116. Amend § 265.117 by revising paragraphs (a)(2)(i) and (ii) to read as follows:

§ 265.117 Post-closure care and use of property.

(a) * * *

(2) * * *

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Regional Administrator finds that the reduced period is sufficient to protect human health and the environment (*e.g.,* leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if the Regional Administrator finds that the extended period is necessary to protect human health and the environment (*e.g.,* leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

* * * * *

■ 117. Amend § 265.118 by:

■ a. Revising the first and second sentences of paragraph (e) introductory text;

■ b. Revising the second and sixth sentences of paragraph (f);

■ c. Revising the second, third, and sixth sentences of paragraph (g)(1)(ii);

■ d. Revising paragraph (g)(1)(iii);

■ e. Revising paragraphs (g)(2) introductory text and (g)(2)(i); and

■ f. Revising the first sentence of paragraph (g)(2)(ii).

The revisions read as follows:

§ 265.118 Post-closure plan; amendment of plan.

* * * * *

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit the post-closure plan to the Regional Administrator at least 180 days before the date the owner or operator expects to begin partial or final closure of the first hazardous waste disposal unit. The date the owner or operator ''expects to begin closure'' of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. * * *

* * * * *

(f) * * * The Regional Administrator will also, in response to a request or at the Regional Administrator's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. * * * If the Regional Administrator does not approve the plan, the Regional Administrator shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. * * *

(g) * * *

(1) * * *

(ii) * * * Whenever the Regional Administrator is considering a petition, the Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. The Regional Administrator will also, in response to a request or at the Regional Administrator's own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. * * * After considering the comments, the Regional Administrator will issue a final determination, based upon the criteria set forth in paragraph (g)(1) of this section.

(iii) If the Regional Administrator denies the petition, the Regional Administrator will send the petitioner a brief written response giving a reason for the denial.

(2) The Regional Administrator may tentatively decide to modify the post-closure plan if the Regional Administrator deems it necessary to prevent threats to human health and the environment. The Regional Administrator may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Regional Administrator will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in paragraph (g)(1)(ii) of this section. After considering the comments, the Regional Administrator will issue a final determination.

(ii) The Regional Administrator will base the final determination upon the same criteria as required for petitions under paragraph (g)(1)(i) of this section.

* * *

* * * * *

■ 118. Amend § 265.119 by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b)(2); and

■ c. Revising the first sentence of paragraph (c) introductory text.

The revisions read as follows:

§ 265.119 Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of the owner's or operator's knowledge and in accordance with any records the owner or operator has kept.

(b) * * *

(2) Submit a certification signed by the owner or operator that the owner or operator has recorded the notation specified in paragraph (b)(1) of this section and a copy of the document in which the notation has been placed, to the Regional Administrator.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated

structures, equipment, and soils, the owner or operator must request a modification to the approved post-closure plan in accordance with the requirements of § 265.118(g). * * *

* * * * *

■ 119. Amend § 265.120 by revising the last sentence to read as follows:

§ 265.120 Certification of completion of post-closure care.

* * * Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until the Regional Administrator releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

Subpart H—Financial Requirements

■ 120. Amend § 265.142 by:
■ a. Revising the fourth sentence of paragraph (a)(2); and
■ b. Revising paragraph (b) introductory text.

The revisions read as follows:

§ 265.142 Cost estimate for closure.

(a) * * *

(2) * * * The owner or operator may use costs for on-site disposal if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

* * * * *

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.143(e)(3). The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product or Gross Domestic Product published by the U.S. Department of Commerce in its *Survey of Current Business,* as specified in paragraphs (b)(1) and (2) of this section. The owner or operator must use the selected Gross National Product or Gross Domestic Product Implicit Price Deflator consistently for each subsequent inflation update. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

■ 121. Amend § 265.143 by:
■ a. Revising the second sentence of the introductory text;
■ b. Revising paragraphs (a)(4), (5), and (8);
■ c. Revising the fourth and fifth sentences of paragraph (a)(10);
■ d. Revising paragraph (b)(9);
■ e. Revising the fourth and fifth sentences of paragraph (d)(5);
■ f. Revising paragraph (d)(10) introductory text;
■ g. Revising the first sentence of paragraph (e)(1) introductory text;
■ h. Revising paragraph (e)(1)(ii)(A);
■ i. Revising paragraph (e)(3) introductory text;
■ j. Revising paragraphs (e)(3)(iii); (e)(3)(iii)(A), and (e)(3)(iii)(B);
■ k. Revising paragraphs (e)(4)(ii) and (e)(4)(v);
■ l. Revising the first sentence of paragraph (e)(6);
■ m. Revising the first sentence of paragraph (e)(8);
■ n. Revising after the italicized subject heading the fourth sentence of paragraph (f); and
■ o. Revising paragraph (h).

The revisions read as follows:

§ 265.143 Financial assurance for closure.

* * * The owner or operator must choose from the options as specified in paragraphs (a) through (e) of this section.

(a) * * *

(4) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this section, the owner's or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in paragraph (a)(3) of this section.

* * * * *

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the current closure cost estimate covered by the trust fund.

* * * * *

(10) * * * If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the Regional Administrator may withhold reimbursements of such amounts as the Regional Administrator deems prudent until the Regional Administrator determine, in accordance with § 265.143(h) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the trustee to make such reimbursements, the Regional Administrator will provide to the owner or operator a detailed written statement of reasons.

* * * * *

(b) * * *

(9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on the receipt of evidence of alternate financial assurance as specified in this section.

* * * * *

(d) * * *

(5) * * * If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the Regional Administrator may withhold reimbursement of such amounts as the Regional Administrator deem prudent until the Regional Administrator determine, in accordance with § 265.143(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, the Regional Administrator will provide to the owner or operator a detailed written statement of reasons.

* * * * *

(10) The Regional Administrator will give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

* * * * *

(e) * * *

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. * * *

* * * * *

(ii) * * *

(A) A current rating for their most recent bond issuance of BBB- or better

as issued by Standard and Poor's or Baa3 or better as issued by Moody's; and
* * * * *

(3) To demonstrate that the owner or operator meets this test, the owner or operator must submit the following items to the Regional Administrator:
* * * * *

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator including:

(A) A statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, a description of the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

(4) * * *

(ii) Certify that the owner's or operator's chief financial officer has grounds to believe that the owner or operator meets the criteria of the financial test;
* * * * *

(v) Specify the date, no later than 90 days after the end of such fiscal year, when the chief financial officer will submit the documents specified in paragraph (e)(3) of this section; and
* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. * * *
* * * * *

(8) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see paragraph (e)(3)(ii) of this section). * * *
* * * * *

(f) * * * If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. * * *
* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

■ 122. Amend § 265.144 by revising paragraph (b) introductory text to read as follows:

§ 265.144 Cost estimate for post-closure care.

* * * * *

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.145. For owners and operators using the financial test or corporate guarantee, the post-closure care cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.145(e)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product or Gross Domestic Product published by the U.S. Department of Commerce in its *Survey of Current Business,* as specified in paragraphs (b)(1) and (2) of this section. The owner or operator must use the selected Gross National Product or Gross Domestic Product Implicit Price Deflator consistently for each subsequent inflation update. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
* * * * *

■ 123. Amend § 265.145 by:
■ a. Revising paragraphs (a)(4) and (5);
■ b. Revising paragraph (a)(8);
■ c. Revising the third sentence to paragraph (a)(11);
■ d. Revising paragraph (b)(9);
■ e. Revising the third sentence to paragraph (d)(5);
■ f. Revising paragraph (d)(11) introductory text;
■ g. Revising the first sentence of paragraph (e)(1) introductory text;
■ h. Revising paragraph (e)(1)(i)(D);
■ i. Revising paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(D);
■ j. Revising paragraph (e)(3) introductory text;
■ k. Revising paragraphs (e)(3)(iii) introductory text, (e)(3)(iii)(A), and (e)(3)(iii)(B);
■ l. Revising paragraphs (e)(4)(ii) and (e)(4)(v);
■ m. Revising the first sentence of paragraph (e)(6);
■ n. Revising the first sentence of paragraph (e)(8);
■ o. Revising after the italicized subject heading the fourth sentence of paragraph (f); and
■ p. Revising paragraph (h).

The revisions read as follows:

§ 265.145 Financial assurance for post-closure care.

* * * * *

(a) * * *

(4) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(3) of this section.

(5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this section, the owner's or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in paragraph (a)(3) of this section.
* * * * *

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.
* * * * *

(11) * * * If the Regional Administrator does not instruct the trustee to make such reimbursements, the Regional Administrator will provide the owner or operator with a detailed written statement of reasons.
* * * * *

(b) * * *

(9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on the Regional Administrator's receipt of

evidence of alternate financial assurance as specified in this section.

* * * * *

(d) * * *

(5) * * * If the Regional Administrator does not instruct the insurer to make such reimbursements, the Regional Administrator will provide a detailed written statement of reasons.

* * * * *

(11) The Regional Administrator will give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

* * * * *

(e) * * *

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. * * *

(i) * * *

(D) Assets in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(A) A current rating for the most recent bond issuance of BBB- or better as issued by Standard and Poor's or Baa3 or better as issued by Moody's; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(3) To demonstrate that the owner or operator meets this test, the owner or operator must submit the following items to the Regional Administrator:

* * * * *

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator including:

(A) A statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, a description of the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

(4) * * *

(ii) Certify that the owner's or operator's chief financial officer has grounds to believe that the owner or operator meets the criteria of the financial test;

* * * * *

(v) Specify the date, no later than 90 days after the end of such fiscal year, when the owner's or operator's chief financial officer will submit the documents specified in paragraph (e)(3) of this section; and

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. * * *

* * * * *

(8) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see paragraph (e)(3)(ii) of this section). * * *

* * * * *

(f) * * * If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. * * *

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required to maintain financial assurance for post-closure care of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

■ 124. Amend § 265.147 by:

■ a. Revising after the italicized subject heading the sixth sentence of paragraph (c);

■ b. Revising after the italicized subject heading the third and sixth sentences of paragraph (d);

■ c. Revising after the italicized subject heading the first sentence of paragraph (e);

■ d. Revising the first sentence of paragraph (f)(1);

■ e. Revising paragraph (f)(1)(i)(C)(*1*);

■ f. Revising paragraphs (f)(1)(ii)(A) and (f)(1)(ii)(D)(*1*);

■ g. Revising paragraph (f)(3) introductory text;

■ h. Revising the second sentence of paragraph (f)(3)(i);

■ i. Revising paragraphs (f)(3)(iii) introductory text, (f)(3)(iii)(A), and (f)(3)(iii)(B);

■ j. Revising paragraphs (f)(4)(ii) and (f)(4)(v);

■ k. Revising the first sentence of paragraph (f)(6); and

■ l. Revising the first sentence of paragraph (f)(7).

The revisions read as follows:

§ 265.147 Liability requirements.

* * * * *

(c) * * * Notwithstanding any other provision, the Regional Administrator may hold a public hearing at the Regional Administrator's discretion or whenever the Regional Administrator finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant a variance.

(d) * * * In addition, if the Regional Administrator determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the Regional Administrator may require that an owner or operator of the facility comply with paragraph (b) of this section. * * * Notwithstanding any other provision, the Regional Administrator may hold a public hearing at the Regional Administrator's discretion or whenever the Regional Administrator finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

(e) * * * Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner and operator are no longer required by this section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

(f) * * *

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. * * *

(i) * * *

(C) * * *

(*1*) At least 90 percent of the owner or operator seeking to pass the financial test's total assets; or

* * * * *

(ii) * * *

(A) A current rating for the owner or operator seeking to pass the financial test's most recent bond issuance of BBB- or better as issued by Standard and Poor's, or Baa3 or better as issued by Moody's; and

* * * * *

(D) * * *

(*1*) At least 90 percent of the owner or operator seeking to pass the financial test's total assets; or

* * * * *

(3) To demonstrate that the owner or operator meets this test, the owner or operator must submit the following three items to the Regional Administrator:

(i) * * * If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§ 264.143(f), 264.145(f), 265.143(e), and 265.145(e), *and* liability coverage, the owner or operator must submit the letter specified in § 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in § 264.151(f) is not required.

* * * * *

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator including:

(A) A statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, a description of the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

(4) * * *

(ii) Certify that the owner's or operator's chief financial officer has grounds to believe that the owner or operator meets the criteria of the financial test;

* * * * *

(v) Specify the date, no later than 90 days after the end of such fiscal year, when the owner's or operator's chief financial officer will submit the documents specified in paragraph (f)(3) of this section; and

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. * * *

(7) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). * * *

* * * * *

■ 125. Amend § 265.148 by revising the second sentence of paragraph (a) to read as follows:

§ 265.148 Incapacity of owners or operators, guarantors, or financial institutions.

(a) * * * A guarantor of a corporate guarantee as specified in §§ 265.143(e) and 265.145(e) must make such a notification if the guarantor is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

* * * * *

■ 126. Amend § 265.149 by revising the second and fifth sentences of paragraph (a)(2) to read as follows:

§ 265.149 Use of State-required mechanisms.

(a) * * *

(2) * * * The Regional Administrator may also consider other factors as the Regional Administrator deems appropriate. * * * The Regional Administrator will notify the owner or operator of the determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. * * *

* * * * *

■ 127. Amend § 265.150 by revising the second and fifth sentences of paragraph (a)(2) to read as follows:

§ 265.150 State assumption of responsibility.

(a) * * *

(2) * * * The Regional Administrator may also consider other factors as the Regional Administrator deems appropriate. * * * The Regional Administrator will notify the owner or operator of the determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. * * *

* * * * *

Subpart J—Tank Systems

■ 128. Amend § 265.193 by revising paragraph (h)(1) introductory text to read as follows:

§ 265.193 Containment and detection of releases.

* * * * *

(h) * * *

(1) The Regional Administrator must be notified in writing by the owner or operator that the owner or operator intends to conduct and submit a demonstration for a variance from secondary containment as allowed in paragraph (g) of this section according to the following schedule:

* * * * *

■ 129. Amend § 265.195 by revising the note to paragraph (a) to read as follows:

§ 265.195 Inspections.

(a) * * *

Note: Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction the owner or operator finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.

* * * * *

Subpart K—Surface Impoundments

■ 130. Amend § 265.221 by revising the first sentence of paragraph (g) to read as follows:

§ 265.221 Design and operating requirements.

* * * * *

(g) A freeboard level less than 60 centimeters (two feet) may be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of the qualified engineer's knowledge and opinion, prevent overtopping of the dike. * * *

* * * * *

■ 131. Amend § 265.226 by revising the paragraph ''Comment:'' following paragraph (b)(3) to read as follows:

§ 265.226 Monitoring and inspection.

* * * * *

(b) * * *

(3) * * *

[*Comment:* As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction found.]

■ 132. Amend § 265.229 by revising paragraph (b)(2) to read as follows:

§ 265.229 Special requirements for ignitable or reactive waste.

* * * * *

(b) * * *

(2) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of the qualified chemist's or engineer's knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

* * * * *

Subpart L—Waste Piles

■ 133. Amend § 265.258 by revising paragraph (b) to read as follows:

§ 265.258 Closure and post-closure care.

* * * * *

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 265.310).

Subpart M—Land Treatment

■ 134. Amend § 265.278 by revising paragraphs (c) introductory text and (d) to read as follows:

§ 265.278 Unsaturated zone (zone of aeration) monitoring.

* * * * *

(c) To comply with paragraph (a)(1) of this section, the owner or operator must demonstrate in the unsaturated zone monitoring plan that:

* * * * *

(d) The owner or operator must keep at the facility the unsaturated zone monitoring plan, and the rationale used in developing this plan.

* * * * *

Subpart O—Incinerators

■ 135. Amend § 265.341 by revising the first sentence of the introductory text to read as follows:

§ 265.341 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must sufficiently analyze any waste which the owner or operator has not previously burned in the incinerator to enable the owner or operator to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be emitted. * * *

* * * * *

■ 136. Amend § 265.351 by revising the paragraph ''Comment:'' following the introductory text to read as follows:

§ 265.351 Closure.

* * * * *

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(d) of this chapter, that the residue removed from the owner's or operator's incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262 through 266 of this chapter.]

■ 137. Revise § 265.352 to read as follows:

§ 265.352 Interim status incinerators burning particular hazardous wastes.

(a) Owners or operators of incinerators subject to this subpart may burn EPA Hazardous Wastes FO20, FO21, FO22, FO23, FO26, or FO27 if they receive a certification from the Assistant Administrator for the Office of Land and Emergency Management that they can meet the performance standards of subpart O of part 264 when they burn these wastes.

(b) * * *

(1) The owner or operator will submit an application to the Assistant Administrator for the Office of Land and Emergency Management containing applicable information in §§ 270.19 and 270.62 demonstrating that the incinerator can meet the performance standards in subpart O of part 264 when they burn these wastes.

(2) The Assistant Administrator for the Office of Land and Emergency Management will issue a tentative decision as to whether the incinerator can meet the performance standards in subpart O of part 264. Notification of this tentative decision will be provided by a newspaper notice (as defined in § 260.10) and radio broadcast in the jurisdiction where the incinerator is located. The Assistant Administrator for the Office of Land and Emergency Management will accept comment on the tentative decision for 60 days. The Assistant Administrator for the Office of Land and Emergency Management also may hold a public hearing upon request or at the Assistant Administration's discretion.

(3) After the close of the public comment period, the Assistant Administrator for the Office of Land and Emergency Management will issue a decision whether or not to certify the incinerator.

Subpart P—Thermal Treatment

■ 138. Revise § 265.373 to read as follows:

§ 265.373 General operating requirements.

Before adding hazardous waste, the owner or operator must bring the thermal treatment process to steady state (normal) conditions of operation—including steady state operating temperature—using auxiliary fuel or other means, unless the process is a non—continuous (batch) thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

■ 139. Amend § 265.375 by revising the first sentence of the introductory text to read as follows:

§ 265.375 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must sufficiently analyze any waste which the owner or operator has not previously treated in the thermal process to enable the owner or operator to establish steady state (normal) or other appropriate (for a non—continuous process) operating conditions (including waste and auxiliary fuel feed) and to determine the type of pollutants which might be emitted. * * *

* * * * *

■ 140. Amend § 265.381 by revising the paragraph ''Comment:'' following the introductory text to read as follows:

§ 265.381 Closure.

* * * * *

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that any solid waste removed from the thermal treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262, 263, and 265 of this chapter.]

■ 141. Revise § 265.383 to read as follows:

§ 265.383 Interim status thermal treatment devices burning particular hazardous waste.

(a) Owners or operators of thermal treatment devices subject to this subpart may burn EPA Hazardous Wastes FO20, FO21, FO22, FO23, FO26, or FO27 if they receive a certification from the Assistant Administrator for the Office of

Land and Emergency Management that they can meet the performance standards of subpart O of part 264 when they burn these wastes.

(b) * * *

(1) The owner or operator will submit an application to the Assistant Administrator for the Office of Land and Emergency Management containing the applicable information in §§ 270.19 and 270.62 demonstrating that the thermal treatment unit can meet the performance standard in subpart O of part 264 when they burn these wastes.

(2) The Assistant Administrator for the Office of Land and Emergency Management will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in subpart O of part 264. Notification of this tentative decision will be provided by a newspaper notice (as defined in § 260.10) and radio broadcast in the jurisdiction where the thermal treatment device is located. The Assistant Administrator for the Office of Land and Emergency Management will accept comment on the tentative decision for 60 days. The Assistant Administrator for the Office of Land and Emergency Management also may hold a public hearing upon request or at the Assistant Administrator's discretion.

(3) After the close of the public comment period, the Assistant Administrator for the Office of Land and Emergency Management will issue a decision whether or not to certify the thermal treatment unit.

Subpart Q—Chemical, Physical, and Biological Treatment

■ 142. Amend § 265.403 by revising the paragraph ''Comment:'' following paragraph (b) to read as follows:

§ 265.403 Inspections.

* * * * *

(b) * * *

[*Comment:* As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction found.]

■ 143. Amend § 265.404 by revising the paragraph ''Comment:'' following the introductory text to read as follows:

§ 265.404 Closure.

* * * * *

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3 (c) or (d) of this chapter, that any solid waste removed from the treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262, 263, and 265 of this chapter.]

Subpart W—Drip Pads

■ 144. Amend § 265.440 by revising paragraph (a) to read as follows:

§ 265.440 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use drip pads to convey treated wood drippage, precipitation, and/or surface water run—off to an associated collection system. The requirement at § 265.443(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

* * * * *

§ 265.441 [Removed and Reserved]

■ 145. Remove and reserve § 265.441.

■ 146. Amend § 265.442 by revising the section heading and introductory text to read as follows:

§ 265.442 Design and installation of drip pads.

Owners or operators of drip pads constructed prior to December 6, 1990, and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990, that need to upgrade, repair, or modify their drip pad to comply with § 265.443(b) must develop and submit a written plan to the Regional Administrator 2 years prior to completion of the upgrade. The plan must document compliance with § 265.443. Upon completion of upgrades, repairs, and modifications, owners and operators must submit to the Regional Administrator or state Director, as—built drawings and a certification by a Qualified Professional Engineer attesting that the drip pad conforms to the drawings. Owners and operators of any drip pads (regardless of construction date) must ensure that the pads are designed, installed, and operated in accordance with one of the following:

* * * * *

■ 147. Amend § 265.443 by revising paragraph (a)(4)(i) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4) * * *

(i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, *e.g.,* concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to those drip pads for which the owner or operator elects to comply with § 265.442(b) instead of § 265.442(a).

* * * * *

■ 148. Amend § 265.445 by:

■ a. Revising the first sentence of paragraph (b); and

■ b. Revising paragraph (c)(1) introductory text.

The revisions read as follows:

§ 265.445 Closure.

* * * * *

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, the owner or operator must close the facility and perform post—closure care in accordance with closure and post—closure care requirements that apply to landfills (§ 265.310). * * *

(c) * * *

(1) The owner or operator of a drip pad that was built before December 6, 1990, and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990, that does not comply with the liner requirements of § 265.443(b)(1) must:

* * * * *

Subpart AA—Air Emission Standards for Process Vents

■ 149. Amend § 265.1034 by revising paragraph (b)(1) to read as follows:

§ 265.1034 Test methods and procedures.

* * * * *

(b) * * *

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60, appendix A–7.

* * * * *

■ 150. Amend § 265.1035 by revising paragraph (c)(10)(iv) to read as follows:

§ 265.1035 Recordkeeping requirements.

* * * * *

(c) * * *

(10) * * *

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A–7 after it is successfully repaired or determined to be nonrepairable.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

■ 151. Amend § 265.1063 by revising paragraphs (b)(1) and (d) to read as follows:

§ 265.1063 Test methods and procedures.

* * * * *

(b) * * *

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60, appendix A–7.

* * * * *

(d) An owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the methods described in (1), (2), and (3) below. This determination shall also be made in accordance with the waste analysis plan required by § 265.13(b) or § 268.7(a)(5), if applicable.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 265.1080 [Amended]

■ 152. Amend § 265.1080 by removing and reserving paragraphs (f) and (g).

■ 153. Amend § 265.1081 by revising the definition ''No detectable organic emissions'' to read as follows:

§ 265.1081 Definitions.

* * * * *

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 265.1084(d) of this subpart unless that procedure is not specifically required.

* * * * *

■ 154. Amend § 265.1084 by:

■ a. Revising the first sentence of paragraph (d)(1);

■ b. Revising paragraphs (d)(3), (4), and (6); and

■ c. Revising the first sentence of paragraph (d)(7).

The revisions read as follows:

§ 265.1084 Waste determination procedures.

* * * * *

(d) * * *

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A–7. * * *

* * * * *

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A–7, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous waste placed in the waste management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A–7.

* * * * *

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A–7.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A–7. * * *

* * * * *

Subpart DD—Containment Buildings

■ 155. Amend § 265.1102 by revising the first sentence of paragraph (b) to read as follows:

§ 265.1102 Closure and post-closure care.

* * * * *

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 265.310). * * *

■ 156. Amend appendix I to part 265 by revising the first sentence of the introductory text to read as follows:

Appendix I to Part 265—Recordkeeping Instructions

The recordkeeping provisions of § 265.73 specify that an owner or operator must keep a written operating record at the owner's or operator's facility. * * *

* * * * *

■ 157. Amend appendix III to part 265 by revising the appendix heading and the table to read as follows:

Appendix III to Part 265—EPA Primary National Drinking Water Standards

Parameter	Concentration found at
Arsenic	§ 141.62(b).
Barium	§ 141.62(b).
Cadmium	§ 141.62(b).
Chromium	§ 141.62(b).
Fluoride	§ 141.62(b).
Lead	§ 141.80(c).
Mercury	§ 141.62(b).
Nitrate (as N)	§ 141.62(d).
Selenium	§ 141.62(b).
Endrin	§ 141.61(c).
Lindane	§ 141.61(c).
Methoxychlor	§ 141.61(c).
Toxaphene	§ 141.61(c).
2,4-D	§ 141.61(c).
2,4,5-TP (Silvex)	§ 141.61(c).

Parameter	Concentration found at
Radium	§ 141.66(b).
Gross Alpha	§ 141.66(c).
Gross Beta	§ 141.66(d).
Turbidity	§ 141.13.

* * * * *

■ 158. Amend appendix V to part 265 by revising the second sentence of the third paragraph of the introductory text to read as follows:

Appendix V to Part 265—Examples of Potentially Incompatible Waste

* * * * *

* * *An owner or operator must, as the regulations require, adequately analyze the waste so that the owner or operator can avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 159. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 160. Amend appendix IX to part 266 by revising the first sentence of section 8.3 to read as follows:

Appendix IX to Part 266—Methods Manual for Compliance With the BIF Regulations

* * * * *

8.3 APCS RE Default Values for Ash

Default assumptions for APCS RE for PM are also shown in Table 8.2–1. * * *

* * * * *

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

■ 161. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

Subpart E—Recordkeeping, Reporting, and Notifying

■ 162. Amend § 267.71 by revising the second sentence of paragraph (b)(2) to read as follows:

§ 267.71 Use of the manifest system.

* * * * *

(b) * * *

(2) * * * Note that the Agency does not intend that the owner or operator of a facility whose procedures under § 267.13(b) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. * * *

* * * * *

Subpart G—Closure

■ 163. Amend § 267.117 by revising the second and third sentences of the introductory text to read as follows:

§ 267.117 How do I certify closure?

* * * Both you and a qualified professional engineer must sign the certification. You must furnish documentation supporting the qualified professional engineer's certification to the Director upon request until the Director releases you from the financial assurance requirements for closure under § 267.143(i).

Subpart H—Financial Requirements

■ 164. Amend § 267.143 by revising after the italicized subject heading the first sentence of paragraph (j) to read as follows:

§ 267.143 Financial assurance for closure.

* * * * *

(j) * * * Within 60 days after receiving certifications from the owner or operator and a qualified professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been completed in accordance with the approved closure plan. * * *

■ 165. Amend § 267.147 by revising paragraph (e) to read as follows:

§ 267.147 Liability requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and a qualified professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner and operator are no longer required by this section to maintain liability coverage from that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

Subpart J—Tank Systems

■ 166. Amend § 267.191 by revising the second sentence of the introductory text to read as follows:

§ 267.191 What are the required design and construction standards for new tank systems or components?

* * * You must obtain a written assessment, reviewed and certified by a qualified professional engineer, following 40 CFR 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. * * *

* * * * *

■ 167. Amend § 267.192 by revising the second sentence of paragraph (a) introductory text to read as follows:

§ 267.192 What handling and inspection procedures must I follow during installation of new tank systems?

(a) * * * Before placing a new tank system or component in use, an independent, qualified installation inspector or a qualified professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

* * * * *

■ 168. Amend § 267.200 by revising paragraph (f) introductory text to read as follows:

§ 267.200 What must I do in case of a leak or a spill?

* * * * *

(f) If you have made extensive repairs to a tank system in accordance with paragraph (e) of this section (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by a qualified professional

engineer in accordance with 40 CFR 270.11(d).

* * * * *

Subpart DD—Containment buildings

■ 169. Amend § 267.1101 by revising paragraph (h) to read as follows:

§ 267.1101 What design and operating standards must my containment building meet?

* * * * *

(h) You must obtain certification by a qualified professional engineer that the containment building design meets the requirements of §§ 267.1102, 267.1103, and paragraphs (a) through (f) of this section.

■ 170. Amend § 267.1106 by revising paragraph (c) to read as follows:

§ 267.1106 What do I do if I detect a release?

* * * * *

(c) Upon completing all repairs and cleanup, you must notify the Regional Administrator in writing and provide a verification, signed by a qualified professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)(4) of this section.

PART 268—LAND DISPOSAL RESTRICTIONS

■ 171. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

■ 172. Amend § 268.1 by revising paragraph (c)(3)(i) to read as follows:

§ 268.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(3) * * *

(i) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 146.5(a); and

* * * * *

■ 173. Amend § 268.7 by revising paragraph (a)(9)(iii) to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, reverse distributors, treaters, and disposal facilities.

(a) * * *

(9) * * *

(iii) If the lab pack contains characteristic hazardous wastes (D001–D008 and D010–D043), underlying hazardous constituents (as defined in § 268.2(i)) need not be determined.

* * * * *

Subpart D—Treatment Standards

■ 174. Amend § 268.40 by revising in the table in paragraph (j) entitled ''Treatment Standards For Hazardous Wastes'' the entries ''D009''; ''F039''; and ''U037'' to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

(j) * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[*Note:* NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration [3] in mg/L; or technology code [4]	Concentration [5] in mg/kg unless noted as ''mg/L TCLP''; or technology code [4]
*	* *	*	*	*	*
D009 [9]	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory).	Mercury	7439–97–6	NA	IMERC; OR RMERC.
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory).	Mercury	7439–97–6	NA	RMERC.
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury and that are residues from RMERC only. (Low Mercury Subcategory).	Mercury	7439–97–6	NA	0.20 mg/L TCLP and meet § 268.48 standards. [8]
	All other nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury and that are not residues from RMERC. (Low Mercury Subcategory).	Mercury	7439–97–6	NA	0.025 mg/L TCLP and meet § 268.48 standards. [8]
	All D009 wastewaters	Mercury	7439–97–6	0.15 and meet § 268.48 standards [8].	NA.
	Elemental mercury contaminated with radioactive materials. (*Note:* This subcategory consists of nonwastewaters only.).	Mercury	7439–97–6	NA	AMLGM.
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (*Note:* This subcategory consists of nonwastewaters only.).	Mercury	7439–97–6	NA	IMERC.
	Radioactively contaminated mercury containing batteries. (*Note:* This subcategory consists of nonwastewaters only).	Mercury	7439–97–6	NA	Macroencapsulation in accordance with 40 CFR 268.45.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[*Note:* NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration [3] in mg/L; or technology code [4]	Concentration [5] in mg/kg unless noted as "mg/L TCLP"; or technology code [4]
*	* *	*	*	*	*
F039 ...	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene	208–96–8	0.059	3.4.
		Acenaphthene	83–32–9	0.059	3.4.
		Acetone	67–64–1	0.28	160.
		Acetonitrile	75–05–8	5.6	NA.
		Acetophenone	96–86–2	0.010	9.7.
		2-Acetylaminofluorene	53–96–3	0.059	140.
		Acrolein	107–02–8	0.29	NA.
		Acenaphthene	83–32–9	0.059	3.4.
		Acetone	67–64–1	0.28	160.
		Acetonitrile	75–05–8	5.6	NA.
		Acetophenone	96–86–2	0.01	9.7.
		2-Acetylaminofluorene	53–96–3	0.059	140.
		Acrolein	107–02–8	0.29	NA.
		Acrylonitrile	107–13–1	0.24	84.
		Aldrin	309–00–2	0.021	0.066.
		4-Aminobiphenyl	92–67–1	0.13	NA.
		Aniline	62–53–3	0.81	14.
		o-Anisidine (2-methoxyaniline).	90–04–0	0.01	0.66.
		Anthracene	120–12–7	0.059	3.4.
		Aramite	140–57–8	0.36	NA.
		alpha-BHC	319–84–6	0.00014	0.066.
		beta-BHC	319–85–7	0.00014	0.066.
		delta-BHC	319–86–8	0.023	0.066.
		gamma-BHC	58–89–9	0.0017	0.066.
		Benzene	71–43–2	0.14	10.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene).	205–99–2	0.11	6.8.
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene).	207–08–9	0.11	6.8.
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		Bromodichloromethane	75–27–4	0.35	15.
		Methyl bromide (Bromomethane).	74–83–9	0.11	15.
		4-Bromophenyl phenyl ether.	101–55–3	0.055	15.
		n-Butyl alcohol	71–36–3	5.6	2.6.
		Butyl benzyl phthalate	85–68–7	0.017	28.
		2-sec-Buty-4,6-dinitrophenol (Dinoseb).	88–85–7	0.066	2.5.
		Carbon disulfide	75–15–0	3.8	NA.
		Carbon tetrachloride	56–23–5	0.057	6.0.
		Chlordane (alpha and gamma isomers).	57–74–9	0.0033	0.26.
		p-Chloroaniline	106–47–8	0.46	16.
		Chlorobenzene	108–90–7	0.057	6.0.
		Chlorobenzilate	510–15–6	0.10	NA.
		2-Chloro-1,3-butadiene	126–99–8	0.057	NA.
		Chlorodibromomethane	124–48–1	0.057	15.
		Chloroethane	75–00–3	0.27	6.0.
		bis(2-Chloroethoxy) methane.	111–91–1	0.036	7.2.
		bis(2-Chloroethyl)ether	111–44–4	0.033	6.0.
		Chloroform	67–66–3	0.046	6.0.
		bis(2-Chloroisopropyl)ether	39638–32–9	0.055	7.2.
		p-Chloro-m-cresol	59–50–7	0.018	14.
		Chloromethane (Methyl chloride).	74–87–3	0.19	30.
		2-Chloronaphthalene	91–58–7	0.055	5.6.
		2-Chlorophenol	95–57–8	0.044	5.7.
		3-Chloropropylene	107–05–1	0.036	30.
		Chrysene	218–01–9	0.059	3.4.
		o-Cresol	95–48–7	0.11	5.6.
		p-Cresidine	120–71–8	0.010	0.66.
		m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol).	106–44–5	0.77	5.6.
		Cyclohexanone	108–94–1	0.36	NA.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[*Note:* NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration [3] in mg/L; or technology code [4]	Concentration [5] in mg/kg unless noted as "mg/L TCLP"; or technology code [4]
		1,2-Dibromo-3-chloro propane.	96–12–8	0.11	15.
		Ethylene dibromide (1,2-Dibromoethane).	106–93–4	0.028	15.
		Dibromomethane	74–95–3	0.11	15.
		2,4-D (2,4-Dichlorophenoxy acetic acid).	94–75–7	0.72	10.
		o,p′-DD	53–19–0	0.023	0.087.
		p,p′-DDD	72–54–8	0.023	0.087.
		o,p′-DDE	3424–82–6	0.031	0.087.
		p,p′-DDE	72–55–9	0.031	0.087.
		o,p′-DDT	789–02–6	0.0039	0.087.
		p,p′-DDT	50–29–3	0.0039	0.087.
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2.
		Dibenz(a,e)pyrene	192–65–4	0.061	NA.
		m-Dichlorobenzene	541–73–1	0.036	6.0.
		o-Dichlorobenzene	95–50–1	0.088	6.0.
		p-Dichlorobenzene	106–46–7	0.09	6.0.
		Dichlorodifluoromethane	75–71–8	0.23	7.2.
		1,1-Dichloroethane	75–34–3	0.059	6.0.
		1,2-Dichloroethane	107–06–2	0.21	6.0.
		1,1-Dichloroethylene	75–35–4	0.025	6.0.
		trans-1,2-Dichloroethylene	156–60–5	0.054	30.
		2,4-Dichlorophenol	120–83–2	0.044	14.
		2,6-Dichlorophenol	87–65–0	0.044	14.
		1,2-Dichloropropane	78–87–5	0.85	18.
		cis-1,3-Dichloropropylene	10061–01–5	0.036	18.
		trans-1,3-Dichloropropylene.	10061–02–6	0.036	18.
		Dieldrin	60–57–1	0.017	0.13.
		Diethyl phthalate	84–66–2	0.20	28.
		2,4-Dimethylaniline (2,4-xylidine).	95–68–1	0.010	0.66.
		2–4-Dimethyl phenol	105–67–9	0.036	14.
		Dimethyl phthalate	131–11–3	0.047	28.
		Di-n-butyl phthalate	84–74–2	0.057	28.
		1,4-Dinitrobenzene	100–25–4	0.32	2.3.
		4,6-Dinitro-o-cresol	534–52–1	0.28	160.
		2,4-Dinitrophenol	51–28–5	0.12	160.
		2,4-Dinitrotoluene	121–14–2	0.32	140.
		2,6-Dinitrotoluene	606–20–2	0.55	28.
		Di-n-octyl phthalate	117–84–0	0.017	28.
		Di-n-propylnitrosamine	621–64–7	0.40	14.
		1,4-Dioxane	123–91–1	12.0	170.
		Diphenylamine (difficult to distinguish from diphenylnitrosamine).	122–39–4	0.92	NA.
		Diphenylnitrosamine (difficult to distinguish from diphenylamine).	86–30–6	0.92	NA.
		1,2-Diphenylhydrazine	122–66–7	0.087	NA.
		Disulfoton	298–04–4	0.017	6.2.
		Endosulfan I	939–98–8	0.023	0.066.
		Endosulfan II	33213–6–5	0.029	0.13.
		Endosulfan sulfate	1031–07–8	0.029	0.13.
		Endrin	72–20–8	0.0028	0.13.
		Endrin aldehyde	7421–93–4	0.025	0.13.
		Ethyl acetate	141–78–6	0.34	33.
		Ethyl cyanide (Propanenitrile).	107–12–0	0.24	360.
		Ethyl benzene	100–41–4	0.057	10.
		Ethyl ether	60–29–7	0.12	160.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Ethyl methacrylate	97–63–2	0.14	160.
		Ethylene oxide	75–21–8	0.12	NA.
		Famphur	52–85–7	0.017	15.
		Fluoranthene	206–44–0	0.068	3.4.
		Fluorene	86–73–7	0.059	3.4.
		Heptachlor	76–44–8	0.0012	0.066.
		Heptachlor epoxide	1024–57–3	0.016	0.066.
		1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD).	35822–46–9	0.000035	0.0025.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[*Note:* NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration [3] in mg/L; or technology code [4]	Concentration [5] in mg/kg unless noted as "mg/L TCLP"; or technology code [4]
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF).	67562–39–4	0.000035	0.0025.
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF).	55673–89–7	0.000035	0.0025.
		Hexachlorobenzene	118–74–1	0.055	10.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachlorocyclopentadiene.	77–47–4	0.057	2.4.
		HxCDDs (All Hexachlorodibenzo-p-dioxins).	NA	0.000063	0.001.
		HxCDFs (All Hexachlorodibenzofurans).	NA	0.000063	0.001.
		Hexachloroethane	67–72–1	0.055	30.
		Hexachloropropylene	1888–71–7	0.035	30.
		Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4.
		Indomethane	74–88–4	0.019	65.
		Isobutyl alcohol	78–83–1	5.6	170.
		Isodrin	465–73–6	0.021	0.066.
		Isosafrole	120–58–1	0.081	2.6.
		Kepone	143–50–8	0.0011	0.13.
		Methacylonitrile	126–98–7	0.24	84.
		Methanol	67–56–1	5.6	NA.
		Methapyrilene	91–80–5	0.081	1.5.
		Methoxychlor	72–43–5	0.25	0.18.
		3-Methylcholanthrene	56–49–5	0.0055	15.
		4,4-Methylene bis(2-chloroaniline).	101–14–4	0.50	30.
		Methylene chloride	75–09–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Methyl isobutyl ketone	108–10–1	0.14	33.
		Methyl methacrylate	80–62–6	0.14	160.
		Methyl methanesulfonate	66–27–3	0.018	NA.
		Methyl parathion	298–00–0	0.014	4.6.
		Naphthalene	91–20–3	0.059	5.6.
		2-Naphthylamine	91–59–8	0.52	NA.
		p-Nitroaniline	100–01–6	0.028	28.
		Nitrobenzene	98–95–3	0.068	14.
		5-Nitro-o-toluidine	99–55–8	0.32	28.
		p-Nitrophenol	100–02–7	0.12	29.
		N-Nitrosodiethylamine	55–18–5	0.40	28.
		N-Nitrosodimethylamine	62–75–9	0.40	NA.
		N-Nitroso-di-n-butylamine	924–16–3	0.40	17.
		N-Nitrosomethylethylamine	10595–95–6	0.40	2.3.
		N-Nitrosomorpholine	59–89–2	0.40	2.3.
		N-Nitrosopiperidine	100–75–4	0.013	35.
		N-Nitrosopyrrolidine	930–55–2	0.013	35.
		1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD).	3268–87–9	0.000063	0.005.
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF).	39001–02–0	0.000063	0.005.
		Parathion	56–38–2	0.014	4.6.
		Total PCBs (sum of all PCB isomers, or all Aroclors).	1336–36–3	0.10	10.
		Pentachlorobenzene	608–93–5	0.055	10.
		PeCDDs (All Pentachlorodibenzo-p-dioxins).	NA	0.000063	0.001.
		PeCDFs (All Pentachlorodibenzofurans).	NA	0.000035	0.001.
		Pentachloronitrobenzene	82–68–8	0.055	4.8.
		Pentachlorophenol	87–86–5	0.089	7.4.
		Phenacetin	62–44–2	0.081	16.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		1,3-Phenylenediamine	108–45–2	0.010	0.66.
		Phorate	298–02–2	0.021	4.6.
		Phthalic anhydride	85–44–9	0.055	NA.
		Pronamide	23950–58–5	0.093	1.5.
		Pyrene	129–00–0	0.067	8.2.
		Pyridine	110–86–1	0.014	16.
		Safrole	94–59–7	0.081	22.
		Silvex (2,4,5–TP)	93–72–1	0.72	7.9.
		2,4,5–T	93–76–5	0.72	7.9.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[*Note:* NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration [3] in mg/L; or technology code [4]	Concentration [5] in mg/kg unless noted as "mg/L TCLP"; or technology code [4]
		1,2,4,5-Tetrachloro benzene.	95–94–3	0.055	14.
		TCDDs (All Tetrachloro dibenzo-p-dioxins).	NA	0.000063	0.001.
		TCDFs (All Tetrachloro dibenzofurans).	NA	0.000063	0.001.
		1,1,1,2-Tetrachloroethane	630–20–6	0.057	6.0.
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		2,3,4,6-Tetrachlorophenol	58–90–2	0.030	7.4.
		Toluene	108–88–3	0.080	10.
		Toxaphene	8001–35–2	0.0095	2.6.
		Bromoform (Tribromo methane).	75–25–2	0.63	15.
		1,2,4-Trichlorobenzene	120–82–1	0.055	19.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		1,1,2-Trichloroethane	79–00–5	0.054	6.0.
		Trichloroethylene	79–01–6	0.054	6.0.
		Trichlorofluoromethane	75–69–4	0.020	30.
		2,4,5-Trichlorophenol	95–95–4	0.18	7.4.
		2,4,6-Trichlorophenol	88–06–2	0.035	7.4.
		1,2,3-Trichloropropane	96–18–4	0.85	30.
		1,1,2-Trichloro-1,2,2-trifluoroethane.	76–13–1	0.057	30.
		tris(2,3-Dibromopropyl) phosphate.	126–72–7	0.11	NA.
		Vinyl chloride	75–01–4	0.27	6.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Antimony	7440–36–0	1.9	1.15 mg/L TCLP.
		Arsenic	7440–38–2	1.4	5.0 mg/L TCLP.
		Barium	7440–39–3	1.2	21 mg/L TCLP.
		Beryllium	7440–41–7	0.82	NA.
		Cadmium	7440–43–9	0.69	0.11 mg/L TCLP.
		Chromium (Total)	7440–47–3	2.77	0.60 mg/L TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	NA.
		Fluoride	16984–48–8	35	NA.
		Lead	7439–92–1	0.69	0.75 mg/L TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/L TCLP.
		Nickel	7440–02–0	3.98	11 mg/L TCLP.
		Selenium	7782–49–2	0.82	5.7 mg/L TCLP.
		Silver	7440–22–4	0.43	0.14 mg/L TCLP.
		Sulfide	8496–25–8	14	NA.
		Thallium	7440–28–0	1.4	NA.
		Vanadium	7440–62–2	4.3	NA.
*	* *	*	*	*	*
U037	Chlorobenzene	Chlorobenzene	108–90–7	0.057	6.0.
*	* *	*	*	*	*

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] [Reserved]

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010C or 9012B, found in "Test Methods' for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[8] These wastes, when rendered nonhazardous and then subsequently managed in CWA, or CWA-equivalent systems are not subject to treatment standards. (See § 268.1(c0(3) and (4)).

[9] These wastes, when rendered nonhazardous and then subsequently injected in a Class SDWA well, are not subject to treatment standards. (See § 148.1(d)).

[10] The treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters.

[11] For these wastes, the definition of CMBST is limited to: (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR part 264, subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42(b).

[12] Disposal of K175 wastes that have complied with all applicable 40 CFR 268.40 treatment standards must also be macroencapsulated in accordance with 40 CFR 268.45 Table 1 unless the waste is placed in: (1) A Subtitle C monofill containing only K175 wastes that meet all applicable 40 CFR 268.40 treatment standards; or (2) A dedicated Subtitle C landfill cell in which all other wastes being co-disposed are at pH≤6.0.

■ 175. Amend § 268.48 by revising in the table in paragraph (a) entitled ''Universal Treatment Standards'' footnote number 3 to read as follows:

§ 268.48 Universal treatment standards.

* * * * *

Universal Treatment Standards

* * * * *

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 176. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

■ 177. Amend § 270.1 by:
■ a. Revising after the italicized subject heading the third sentence of paragraph (a)(3);
■ b. Revising paragraph (b) introductory text;
■ c. Revising paragraph (c)(2)(vi); and
■ d. Revising paragraph (c)(3)(i)(D).

The revisions read as follows:

§ 270.1 Purpose and scope of the regulations in this part.

(a) * * *

(3) * * * These separate regulations are located in 40 CFR parts 260, 261, 264, 266, 267, and 268.

(b) *Overview of the RCRA Permit Program.* Generators and transporters of hazardous waste, and owners or operators of hazardous waste treatment, storage, or disposal facilities may be required to file a notification or new notification of that activity under section 3010 (EPA Form 8700–12) after the initial promulgation or subsequent revision of regulations in 40 CFR part 261 (for identifying and listing hazardous wastes) or in parts 262, 263, 264, 265, 266, 267, 268, or 270 (for newly regulated hazardous waste activities). After the initial promulgation of the part 261 regulations, the treatment, storage, or disposal of hazardous waste by any person is prohibited without a RCRA permit or interim status, except as excluded or exempted in § 270.1(c)(2) and (3). For ''existing HWM facilities'' (as defined in § 270.2) that were required to have a permit, the timely submission of both notification under section 3010 and the Part A permit application qualified the owners and operators for interim status under section 3005(e) of RCRA. Facility owners and operators with interim status must comply with interim status standards set forth at 40 CFR parts 265 and 266 or with the analogous provisions of a State program which has received interim or final authorization under part 271. Facility owners and operators with interim status are not relieved from complying with other State requirements. Owners or operators of ''new HWM facilities'' (as defined in § 270.2) must notify (EPA Form 8700–12) and submit Part A (see § 270.13) and Part B (see § 270.14 and applicable sections in §§ 270.15 through 270.28) of the permit application at least 180 days before physical construction is expected to commence. Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA may be eligible for a standardized permit under subpart J of this part if the facility meets the following criteria:

* * * * *

(c) * * *

(2) * * *

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for a period of 14 consecutive calendar days or less.

* * * * *

(3) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosives or munitions emergency response specialist as defined in 40 CFR 260.10.

* * * * *

■ 178. Amend § 270.2 by:
■ a. Revising the definition ''Application''; and
■ b. Revising the definition ''Facility mailing list''.

The revisions read as follows:

§ 270.2 Definitions.

* * * * *

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in States with authorized RCRA programs, including any approved modifications or revisions (contents of part A of the RCRA application per § 270.13). Application also includes the general and specific information required by the Director under §§ 270.14 through 270.28 (contents of part B of the RCRA permit application), and the information necessary for EPA to assess whether the applicant is in compliance with the technical requirements of 40 CFR parts 260, 261, 264, 266, 267, 268, and 270.

* * * * *

Facility mailing list means the mailing list for a facility maintained in accordance with 40 CFR 124.10(c)(1)(ix) and 40 CFR 124.10(c)(1)(xii). The contact information on the mailing list may be in the form of postal and/or electronic mail addresses.

* * * * *

Subpart B—Permit Application

■ 179. Amend § 270.10 by:
■ a. Revising paragraphs (c) and (d);
■ b. Revising the first sentence of the note following paragraph (e)(1)(iii);
■ c. Revising paragraph (e)(2) introductory text;
■ d. Revising paragraphs (h) introductory text and (h)(1); and
■ e. Revising the first sentence of paragraph (h)(2).

The revisions read as follows:

§ 270.10 General application requirements.

* * * * *

(c) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Director receives an application form, including any supplemental information, that has been completed to the Director's satisfaction. At a minimum, an application must contain all of the information required under § 270.13 (part A of the RCRA application) and the information required by §§ 270.10, 270.14, and, as applicable, §§ 270.15 through 270.28,

including all information necessary for EPA to assess whether the applicant is in compliance with all applicable RCRA technical requirements of 40 CFR parts 260, 261, 264, 266, 267, 268, and 270 (*i.e.,* contents of part B of the RCRA application). An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in paragraph (j) of this section. The Director may deny a permit for the active life of a hazardous waste management facility or unit before receiving, or if the applicant fails to submit, a complete application for a permit.

(d) *Information requirements.* All applicants for RCRA permits shall provide to the Director the information set forth in § 270.13, using the Part A application forms and supplemental forms provided by the Director, § 270.14, and, as applicable, §§ 270.10 and 270.15 through 270.28, including all information the Director determines to be necessary to assess whether the applicant is in compliance with all applicable RCRA technical requirements of 40 CFR parts 260, 261, 264, 266, 267, 268, and 270, per § 270.1(a)(3).

(e) * * *

(1) * * *

(iii) * * *

Note: For facilities which must comply with part 265 because they handle a waste listed in EPA's May 19, 1980, part 261 regulations (45 FR 33066 *et seq.*), the deadline for submitting an application is November 19, 1980.

* * *

(2) The Administrator may by publication in the **Federal Register** extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit part A of the permit application if the Administrator finds that

* * * * * *

(h) *Reapplying for a permit.* If you have an effective permit and continue to have permit obligations, you have two options to reapply for a permit:

(1) You must submit a new application, at least 180 days before the expiration date of the effective permit, unless the Director requires or allows an alternate date either prior to or after the 180 days before the expiration date; or

(2) If you intend to be covered by a standardized permit, you must submit a Notice of Intent as described in § 270.51(e)(1) at least 180 days before the expiration date of the effective permit, unless the Director requires or allows an alternate date either prior to or after the 180 days before the expiration date. * * *

* * * * * *

■ 180. Amend § 270.14 by:

■ a. Revising the first, second, third, and fourth sentences of paragraph (a);

■ b. Revising paragraph (b)(7);

■ c. Revising the second sentence of paragraph (b)(11)(iii);

■ d. Revising ''Comment:'' following paragraph (b)(11)(iii);

■ e. Revising paragraph (b)(20);

■ f. Revising the second sentence of paragraph (c)(7) introductory text; and

■ g. Revising the second sentence of paragraph (c)(8) introductory text.

The revisions and additions read as follows:

§ 270.14 Contents of Part B: General requirements.

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§ 270.15 through 270.28 applicable to the facility. The part B application provides the information required by §§ 270.14 through 270.28 and includes information necessary to demonstrate compliance with all applicable RCRA technical requirements of 40 CFR parts 260, 261, 264, 266, 267, 268, and 270. The information required under these provisions is necessary for EPA to determine the applicant's compliance with all applicable RCRA standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B cannot be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. * * *

(b) * * *

(7) A copy of the contingency plan required by part 264, subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in §§ 264.227, 264.253, and 264.196.

* * * * * *

(11) * * *

(iii) * * * This identification must indicate the source of data for such determination and include a copy of the relevant Federal Insurance and Mitigation Administration (FIMA) flood map, if used, or the calculations and maps used where a FIMA map is not available. * * *

[Comment: Where maps for the National Flood Insurance Program produced by the Federal Insurance and Mitigation Administration (FIMA) of the Federal Emergency Management Agency (FEMA) are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIMA map excludes an area (usually areas of the floodplain less than 200 feet in width), these areas must be considered and a determination made as to whether they are in the 100-year floodplain. Where FIMA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.]

* * * * * *

(20) Applicants may be required to submit such information as may be necessary to enable the Regional Administrator to carry out the Regional's Administrator's duties under other Federal laws as required in § 270.3 of this part.

* * * * * *

(c) * * *

(7) * * * Except as provided in § 264.98(g)(5), the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of § 264.100, unless the owner or operator obtains written authorization in advance from the Regional Administrator to submit a proposed permit schedule for submittal of such a plan. * * *

* * * * * *

(8) * * * However, an owner or operator is not required to submit information to establish a corrective action program if the owner or operator demonstrate to the Regional Administrator that alternate concentration limits will protect human health and the environment after considering the criteria listed in § 264.94(b). * * *

* * * * * *

■ 181. Amend § 270.17 by revising the second sentence of paragraph (d) to read as follows:

§ 270.17 Specific Part B information requirements for surface impoundments.

* * * * * *

(d) * * * For new units, the owner or operator must submit a statement by a qualified engineer that the owner or operator will provide such a certification upon completion of construction in accordance with the plans and specifications;

* * * * * *

■ 182. Amend § 270.19 by revising paragraph (d) introductory text to read as follows:

§ 270.19 Specific Part B information requirements for incinerators.

* * * * * *

(d) The Director shall approve a permit application without a trial burn if the Director finds that:

* * * * *

■ 183. Amend § 270.22 by revising after the italicized subject heading the third sentence of paragraph (a)(6) to read as follows:

§ 270.22 Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.

* * * * *

(a) * * *

(6) * * * The Director shall approve a permit application without a trial burn if the Director finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under § 266.102 of this chapter) operating conditions that will ensure conformance with § 266.102(c) of this chapter. * * *

* * * * *

■ 184. Amend § 270.23 by revising the second sentence of paragraph (b) to read as follows:

§ 270.23 Specific Part B information requirements for miscellaneous units.

* * * * *

(b) * * * If the applicant can demonstrate that it does not violate the environmental performance standards of § 264.601 and the Director agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

* * * * *

■ 185. Amend § 270.26 by revising paragraph (c) introductory text to read as follows:

* * * * *

(c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of § 264.573 of this chapter, including the as-built drawings and specifications. This submission must also address the following items as specified in § 264.573 of this chapter:

* * * * *

■ 186. Amend § 270.27 by revising the first sentence of paragraph (a)(6) to read as follows:

§ 270.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.

(a) * * *

(6) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A–7 and control device monitoring methods. * * *

* * * * *

Subpart C—Permit Conditions

■ 187. Amend § 270.32 by revising paragraph (b)(3) to read as follows:

§ 270.32 Establishing permit conditions.

* * * * *

(b) * * *

(3) If, as the result of an assessment(s) or other information, the Administrator or Director determines that conditions are necessary in addition to those required under 40 CFR parts 63, subpart EEE, 264 or 266 to ensure protection of human health and the environment, the Administrator or Director shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.

* * * * *

Subpart D—Changes to Permit

■ 188. Amend § 270.42 by:

■ a. Revising the first sentence of paragraph (a)(1)(ii);

■ b. Revising paragraph (a)(2);

■ c. Revising the first sentence of paragraph (b)(2) introductory text;

■ d. Revising the second sentence of paragraph (b)(4)

■ e. Revising the second sentence of paragraph (b)(5);

■ f. Revising the second sentence of paragraph (b)(6)(iii);

■ g. Revising paragraph (b)(6)(iv)(A) introductory text;

■ h. Revising the second sentence of paragraph (b)(6)(v);

■ i. Revising the first sentence of paragraph (c)(2) introductory text;

■ j. Revising the second sentence of paragraph (c)(4);

■ k. Revising the second sentence of paragraph (c)(5);

■ l. Revising the first sentence of paragraph (e)(2)(iii);

■ m. Revising the first sentence of paragraph (f)(1); and

■ n. Revising paragraph (i).

The revisions and additions read as follows:

§ 270.42 Permit modification at the request of the permittee.

(a) * * *

(1) * * *

(ii) The permittee must send a notice (by postal or electronic mail) of the modification to all persons on the facility mailing list (as defined in § 270.2) and to the appropriate units of State and local government, as specified in 40 CFR 124.10(c)(1)(ix), (x), and (xii). * * *

* * * * *

(2) Class 1 permit modifications identified in appendix I by footnote 1 may be made only with the prior written approval of the Director.

* * * * *

(b) * * *

(2) The permittee must send a notice (by postal or electronic mail) of the modification request to all persons on the facility mailing list (as defined in § 270.2) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(ix), (x), and (xii) and must publish it as a newspaper notice (as defined in § 260.10). * * *

* * * * *

(4) * * * The applicant must hold the meeting in person and, to the extent practicable, in the vicinity of the permitted facility, or by remote means, such as a virtual meeting.

(5) * * * The comment period will begin on the date the permittee publishes the newspaper notice (as defined in § 260.10). * * *

(6) * * *

(iii) * * * The authorized activities must be conducted as described in the permit modification request and must be in compliance with all applicable standards of 40 CFR part 264 (and other parts as applicable). * * *

(iv) * * *

(A) In the case of an automatic authorization under paragraph (b)(6)(iii) of this section, or a temporary authorization under paragraph (b)(6)(i)(D) or (ii)(D) of this section, if the Director has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification (by postal or electronic mail) to persons on the facility mailing list (as defined in § 270.2), and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

* * * * *

(v) * * * The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all applicable standards of 40 CFR part 264 (and other parts as applicable).

* * * * *

(c) * * *

(2) The permittee must send a notice (by postal or electronic mail) of the modification request to all persons on the facility mailing list (as defined in § 270.2) and to the appropriate units of the State and local government as specified in 40 CFR 124.10(c)(1)(ix), (x), and (xii) and must publish it as a

newspaper notice (as defined in § 260.10). * * *

* * * * *

(4) * * * The applicant must hold the meeting in person, to the extent practicable, in the vicinity of the permitted facility, or by remote means, such as a virtual meeting.

(5) * * * The comment period will begin on the date the permittee publishes the newspaper notice (as defined in § 260.10). * * *

* * * * *

(e) * * *

(2) * * *

(iii) The permittee must send a notice (by postal or electronic mail) about the temporary authorization request to all persons on the facility mailing list (as defined in § 270.2) and to the appropriate units of State and local governments as specified in 40 CFR 124.10(c)(1). * * *

* * * * *

(f) * * *

(1) The Director shall notify (by postal or electronic mail) all persons on the facility mailing list (as defined in § 270.2) and the appropriate units of State and local government (as specified in § 124.10(c)(1)) within 10 days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. * * *

* * * * *

(i) *Permit modification list.* The Director must maintain a list of all approved permit modifications and must publish a notice once a year in a newspaper notice (as defined in § 260.10) with State-wide accessibility and include in the notice that an updated list is available for review.

* * * * *

■ 189. Amend the table to appendix I to § 270.42 by revising the entries ''F.1.c.,'' ''F.4.a.,'' ''G.1.e.,'' ''G.5.c.,'' ''H.5.c.,'' ''J.6.c.,'' and ''L.10.'' to read as follows:

Appendix I to § 270.42—Classification of Permit Modification

Modifications	Class
* * * * * * *	
F. *Containers:*	
1. Modification or addition of container units:	
* * * * * * *	
c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards with prior approval of the Director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1] 1
* * * * * * *	
4. Storage or treatment of different wastes in containers:	
a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1] 1
* * * * * * *	
G. *Tanks:*	
1.	
* * * * * * *	
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards with prior approval of the Director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1] 1
* * * * * * *	
5. Management of different wastes in tanks:	
* * * * * * *	
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1] 1
* * * * * * *	
H. *Surface Impoundments:*	
* * * * * * *	
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
* * * * * * *	
c. That are wastes restricted from land disposal that meet the applicable treatment standards and provided that the unit meets the minimum technological requirements stated in § 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
* * * * * * *	
J. *Landfills and Unenclosed Waste Piles:*	
* * * * * * *	
6. Landfill different wastes:	

Modifications	Class
* * * * * * *	
c. That are wastes restricted from land disposal that meet the applicable treatment standards and provided that the landfill unit meets the minimum technological requirements stated in § 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
* * * * * * *	
L. *Incinerators, Boilers, and Industrial Furnaces:*	
* * * * * * *	
10. Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(k) are followed	[1] 1
* * * * * * *	

[1] Class 1 modifications requiring prior Agency approval.

Subpart E—Expiration and Continuation of Permits

■ 190. Amend § 270.51 by:
■ a. Revising paragraph (a)(1); and
■ b. Adding paragraph (f).

The revision and addition read as follows:

§ 270.51 Continuation of expiring permits.

(a) * * *

(1) The permittee has submitted a timely application under § 270.14 and the applicable sections in § 270.15 through § 270.28, including the information necessary to assess whether the permittee is in compliance with all applicable RCRA technical requirements of parts 260, 261, 264, 266, 267, 268, and 270 which are required for a complete application (under § 270.10) for a new permit; and

* * * * *

(f) *Changes to continued permits.* Permits that have been continued in accordance with paragraph (a) of this section can be modified in accordance with §§ 270.41 through 270.42. Alternatively, a change that would otherwise constitute a permit modification (of any permit modification class) can be incorporated in the permit reissuance, using the permit issuance process in lieu of the modification processes in §§ 270.41 through 270.42.

Subpart F—Special Forms of Permits

■ 191. Amend § 270.62 by:
■ a. Revising paragraph (a)(2);
■ b. Revising the second sentence of paragraph (b)(4);
■ c. Revising paragraph (b)(5) introductory text; and
■ d. Revising paragraph (c)(2).

The revisions read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(a) * * *

(2) The Director will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of § 264.343 of this chapter based on the Director's engineering judgment.

(b) * * *

(4) * * * These trial POHCs will be specified by the Director based on the Director's estimate of the difficulty of incineration of the constituents identified in the waste analysis, the concentration or mass in the waste feed, and, for wastes listed in part 261, subpart D, of this chapter, the hazardous waste organic constituent or constituents identified in appendix VII of that part as the basis for listing.

(5) The Director shall approve a trial burn plan if the Director finds that:

* * * * *

(c) * * *

(2) The Director will review this statement and any other relevant information submitted with part B of the permit application and specify those requirements for this period most likely to meet the performance standards of § 264.343 of this chapter based on the Director's engineering judgment.

* * * * *

■ 192. Amend § 270.63 by:
■ a. Revising paragraphs (a)(1) and (2);
■ b. Revising the first sentence of paragraph (b) introductory text;
■ c. Revising the first sentence of paragraph (c);
■ d. Revising paragraph (d) introductory text; and
■ e. Revising the first sentence of paragraph (d)(2).

The revisions read as follows:

§ 270.63 Permits for land treatment demonstrations using field test or laboratory analyses.

(a) * * *

(1) The Director may issue a two-phase facility permit if the Director finds that, based on information submitted in part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Director finds that not enough information exists to establish permit conditions to attempt to provide for compliance with all of the requirements of subpart M, the Director must issue a treatment demonstration permit covering only the field test or laboratory analyses.

(b) If the Director finds that a phased permit may be issued, the Director will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. * * *

* * * * *

(c) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, the owner or operator must submit to the Director a certification, signed by a person authorized to sign a permit application or report under § 270.11, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. * * *

(d) If the Director determines that the results of the field tests or laboratory analyses meet the requirements of § 264.272 of this chapter, the Director will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with part 264, subpart M, of this chapter, based upon the results of the field tests or laboratory analyses.

* * * * *

(2) If no modifications of the second phase of the permit are necessary, the Director will give notice of the final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. * * *

■ 193. Amend § 270.65 by revising paragraph (c) to read as follows:

§ 270.65 Research, development, and demonstration permits.

* * * * *

(c) The Administrator may order an immediate termination of all operations at the facility at any time the Administrator determines that termination is necessary to protect human health and the environment.

* * * * *

■ 194. Amend § 270.66 by revising paragraph (b)(3)(i) to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(b) * * *

(3) * * *

(i) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Director to reflect the trial burn results, the Director will establish the operating requirements most likely to ensure compliance with the performance standards of §§ 266.104 through 266.107 of this chapter based on the Director's engineering judgment.

* * * * *

Subpart G—Interim Status

■ 195. Amend § 270.70 by revising the fourth sentence of paragraph (b) to read as follows:

§ 270.70 Qualifying for interim status.

* * * * *

(b) * * * The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in the part A application. * * *

* * * * *

■ 196. Amend § 270.72 by revising the second and fourth sentences of paragraph (a)(4) to read as follows:

§ 270.72 Changes during interim status.

(a) * * *

(4) * * * When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR part 265, subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that the new owner or operator are complying with the requirements of that subpart. * * * Upon demonstration to the Director by the new owner or operator of compliance with subpart H, the Director shall notify the old owner or operator in writing that the old owner or operator no longer need to comply with subpart H as of the date of demonstration. * * *

* * * * *

Subpart H—Remedial Action Plans (RAPs)

■ 197. Amend § 270.110 by revising paragraph (h) to read as follows:

§ 270.110 What must I include in my application for a RAP?

* * * * *

(h) Such information as may be necessary to enable the Regional Administrator to carry out the Regional's Administrator's duties under other Federal laws as is required for traditional RCRA permits under § 270.14(b)(20);

* * * * *

■ 198. Amend § 270.140 by revising the introductory text to read as follows:

§ 270.140 What else must the Director prepare in addition to the draft RAP or notice of intent to deny?

Once the Director has prepared the draft RAP or notice of intent to deny, the Director must then:

* * * * *

■ 199. Amend § 270.145 by:

■ a. Revising paragraphs (a)(1), (2), (3), and (4); and

■ b. Revising the first and second sentences of paragraph (d) introductory text.

The revisions read as follows:

§ 270.145 What are the procedures for public comment on the draft RAP or notice of intent to deny?

(a) * * *

(1) Send notice to you of the Director's intention to approve or deny your RAP application, and send you a copy of the statement of basis;

(2) Publish a notice of the Director's intention to approve or deny your RAP application in a newspaper notice (as defined in § 260.10);

(3) Broadcast the Director's intention to approve or deny your RAP application over a local radio station; and

(4) Send a notice of the Director's intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

* * * * *

(d) If, within the comment period, the Director receives written notice of opposition to the Director's intention to approve or deny your RAP application and a request for a hearing, the Director must hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Director may also determine on the Director's own initiative that an informal hearing is appropriate. * * *

* * * * *

■ 200. Amend § 270.150 by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 270.150 How will the Director make a final decision on my RAP application?

* * * * *

(b) If the Director determines that your RAP includes the information and terms and conditions required in § 270.135, then the Director will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.

(c) If the Director determines that your RAP does not include the information required in § 270.135, then the Director will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.

(d) If the Director's final decision is that the tentative decision to deny the RAP application was incorrect, the Director will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this subpart.

(e) When the Director issues the final RAP decision, the Director must refer to the procedures for appealing the decision under § 270.155.

* * * * *

■ 201. Amend § 270.160 by revising paragraph (a) to read as follows:

§ 270.160 When does my RAP become effective?

* * * * *

(a) The Director specifies a later effective date in the Director's decision.

* * * * *

■ 202. Amend § 270.175 by:

■ a. Revising the first sentence of paragraph (a) introductory text; and

■ b. Revising paragraph (b).

The revisions read as follows:

§ 270.175 For what reasons may the Director choose to modify my final RAP?

(a) The Director may modify your final RAP on the Director's own initiative only if one or more of the following reasons listed in this section exist(s). * * *

* * * * *

(b) Notwithstanding any other provision in this section, when the Director reviews a RAP for a land disposal facility under § 270.195, the

Director may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in parts 124, 260 through 266 and 270 of this chapter.

* * * * *

■ 203. Amend § 270.180 by revising the first sentence of paragraph (a) to read as follows:

§ 270.180 For what reasons may the Director choose to revoke and reissue my final RAP?

(a) The Director may revoke and reissue your final RAP on the Director's own initiative only if one or more reasons for revocation and reissuance exist(s). * * *

* * * * *

■ 204. Revise § 270.185 to read as follows:

§ 270.185 For what reasons may the Director choose to terminate my final RAP, or deny my renewal application?

The Director may terminate your final RAP on the Director's own initiative, or deny your renewal application for the same reasons as those listed for RAP modifications in § 270.175(a)(5) through (7) if the Director determines that termination of your RAP or denial of your RAP renewal application is appropriate.

■ 205. Amend § 270.215 by revising the first and third sentences of paragraph (d) to read as follows:

§ 270.215 How are time periods in the requirements in this subpart and my RAP computed?

* * * * *

(d) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon the party or interested person by mail, 3 days must be added to the prescribed term. * * * However, if the Director notifies you of the Director's decision by mail, then you may have 33 days to petition the Environmental Appeals Board.)

■ 206. Amend § 270.220 by revising the first sentence of paragraph (b) to read as follows:

§ 270.220 How may I transfer my RAP to a new owner or operator?

* * * * *

(b) When a transfer of ownership or operational control occurs, you as the old owner or operator must comply with the applicable requirements in part 264, subpart H (Financial Requirements), of this chapter until the new owner or operator has demonstrated that the new owner or operator is complying with the requirements in that subpart. * * *

Subpart J–RCRA Standardized Permits for Storage and Treatment Units

■ 207. Amend § 270.280 by revising paragraphs (a)(2) and (3) to read as follows:

§ 270.280 What are the certification requirements?

* * * * *

(a) * * *

(2) I will make all information that I am required to maintain at my facility by §§ 270.290 through 270.315 readily available for review by the permitting agency and the public; and,

(3) I will continue to make all information required by §§ 270.290 through 270.315 available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

* * * * *

■ 208. Amend § 270.290 by revising the second sentence of paragraph (l) to read as follows:

§ 270.290 What general types of information must I keep at my facility?

* * * * *

(l) * * * A brief description of how training will be designed to meet actual job tasks under 40 CFR 267.16(d)(3) requirements.

* * * * *

■ 209. Amend § 270.305 by revising paragraph (a) to read as follows:

§ 270.305 What tank information must I keep at my facility?

* * * * *

(a) A written assessment that is reviewed and certified by a qualified professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under 40 CFR 267.191 and 267.192.

* * * * *

■ 210. Amend § 270.315 by revising the first sentence of paragraph (f) to read as follows:

§ 270.315 What air emissions control information must I keep at my facility?

* * * * *

(f) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A–7 and control device monitoring methods. * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 211. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

Subpart A—Requirements for Final Authorization

■ 212. Amend § 271.1 by:

■ a. Revising paragraph (f);

■ b. Revising the note to paragraph (j)(2);

■ c. Revising the entry ''Oct. 31, 2001'' in table 1 to paragraph (j)(2); and

■ d. Revising the entries ''May 20, 2002'' and ''Jan. 24, 2003'' in table 2 to paragraph (j)(2).

The revisions read as follows:

§ 271.1 Purpose and scope.

* * * * *

(f) Except as provided in § 271.3(b)(3), upon approval of a State permitting program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

* * * * *

(j) * * *

(2) * * *

Note: *See* §§ 264.1(f)(3), 265.1(c)(4)(ii), 271.3(b), and 271.21(e)(2) for applicability.

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	* * * *	*	*
Oct. 31, 2001	Listing of Inorganic Chemical Manufacturing Wastes	66 FR 58299	May 20, 2002.

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
*	* * * * *	*	*

[1] These regulations implement HSWA only to the extent that they apply to tank systems owned or operated by small quantity generators, establish leak detection requirements for all new underground tank systems, and establish permitting standards for underground tank systems that cannot be entered for inspection.

[2] These regulations, including test methods for benzo(k)fluoranthene and technical standards for drip pads, implement HSWA only to the extent that they apply to the listing of Hazardous Waste No. F032, and wastes that are hazardous because they exhibit the Toxicity Characteristic. These regulations, including test methods for benzo(k)fluoranthene and technical standards for drip pads, do not implement HSWA to the extent that they apply to the listings of Hazardous Waste Nos. F034 and F035.

[3] The following portions of this rule are not HSWA regulations: §§ 264.19 and 265.19 for final covers.

[4] The following portions of this rule are not HSWA regulations: §§ 260.30, 260.31, 261.2.

[5] These regulations implement HSWA only to the extent that they apply to the standards for staging piles and to §§ 264.1(j) and 264.101(d) of this chapter.

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	**Federal Register** reference
*	* * * * *	*	*
May 20, 2002	Prohibition on land disposal of K176, K177, and K178 wastes, and prohibition on land disposal of radioactive waste mixed with K176, K177, and K178 wastes, including soil and debris.	3004(g)(4)(C) and 3004(m).	Nov. 20, 2001, 66 FR 58299.
Jan. 24, 2003	Elimination of LDR Treatment Standards Exemption for K061 Derived Fertilizers.	3004(g)(6)	July 24, 2002, 67 FR 48414.
*	* * * * *	*	*

[1] Note that the effective date was changed to Jan. 29, 1986 by the Nov. 29, 1985 rule.

[2] Note that the effective date was changed to Sept. 22, 1986 by the Mar. 24, 1986 rule.

■ 213. Amend § 271.14 by revising paragraph (x) to read as follows:

§ 271.14 Requirements for permitting.

* * * * *

(x) Section 124.10 (a)(1)(ii), (a)(1)(iii), (b), (c), (d), and (e)—(Public notice);

* * * * *

■ 214. Amend § 271.16 by revising paragraph (e) introductory text to read as follows:

§ 271.16 Requirements for enforcement authority.

* * * * *

(e) Any State authority used to issue an enforceable document either in lieu of a post-closure permit as provided in 40 CFR 270.1(c)(7), or as a source of alternative requirements for regulated units, as provided under 40 CFR 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d), and 265.140(d), shall have available the following remedies:

* * * * *

■ 215. Amend § 271.20 by revising paragraph (a)(1)(i) to read as follows:

§ 271.20 Approval process.

(a) * * *

(1) * * *

(i) Publication in newspaper notice (as defined in § 260.10) sufficient to attract statewide attention; and

* * * * *

■ 216. Amend § 271.21 by:

■ a. Revising paragraph (b)(3)(i)(B);

■ b. Revising paragraph (b)(4)(i)(B); and

■ c. Revising the first sentence of paragraph (f).

The revisions read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) In newspaper notice (as defined in § 260.10) sufficient to attract Statewide attention; and

* * * * *

(4) * * *

(i) * * *

(B) In newspaper notice (as defined in § 260.10) sufficient to attract Statewide attention; and

* * * * *

(f) A State must modify its program to comply with any Federal program changes which occur prior to the day that final authorization is received, except for those changes that the State has already received authorization for pursuant to § 271.3(c). * * *

* * * * *

■ 217. Amend § 271.23 by revising paragraph (a)(3) to read as follows:

§ 271.23 Procedures for withdrawing approval of State programs.

(a) * * *

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the **Federal Register** and in a newspaper notice (as defined in § 260.10) sufficient to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 218. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

Subpart A—General

■ 219. Amend § 273.9 by revising the definition ''Universal waste transfer facility'' to read as follows:

§ 273.9 Definitions.

* * * * *

Universal waste transfer facility means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for 14 consecutive calendar days or less.

* * * * *

Subpart D—Standards for Universal Waste Transporters

■ 220. Amend § 273.53 by revising paragraphs (a) and (b) to read as follows:

§ 273.53 Storage time limits.

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for 14 consecutive calendar days or less.

(b) If a universal waste transporter stores universal waste for more than 14 consecutive calendar days, the transporter becomes a universal waste handler and must comply with the applicable requirements of subparts B or C of this part while storing the universal waste.

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

■ 221. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

■ 222. Amend § 279.42 by revising paragraph (b) to read as follows:

§ 279.42 Notification.

* * * * *

(b) *Mechanics of notification.* A used oil transporter who has not received an EPA identification number must obtain an EPA identification number by applying to the Regional Administrator using EPA Form 8700–12.

(1) [Reserved]

(2) [Reserved]

Subpart F—Standards for Used Oil Processors and Re-Refiners

■ 223. Amend § 279.51 by revising paragraph (b) to read as follows:

§ 279.51 Notification.

* * * * *

(b) *Mechanics of notification.* A used oil processor or re-refiner who has not received an EPA identification number must obtain an EPA identification number by applying to the Regional Administrator using EPA Form 8700–12.

(1) [Reserved]

(2) [Reserved]

Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

■ 224. Amend § 279.62 by revising paragraph (b) to read as follows:

§ 279.62 Notification.

* * * * *

(b) *Mechanics of notification.* A used oil burner who has not received an EPA identification number must obtain an EPA identification number by applying to the Regional Administrator using EPA Form 8700–12.

(1) [Reserved]

(2) [Reserved]

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