

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In This Box

FILED

2010 JUN -9 AM 10:41

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Department of Environmental Protection - Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR25

TITLE OF RULE BEING AMENDED: Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 12, 2010 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection
Dolly Sods Conference Room
601 57th Street, S.E.
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

DATE WRITTEN COMMENT PERIOD ENDS: July 12, 2010 TIME: Close of Hearing

WRITTEN COMMENTS MAY BE MAILED TO:

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Kathy Cosco, Public Information Office
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

BRIEFING DOCUMENT

Rule Title: 45CSR25 - "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities."

A. AUTHORITY: W.Va. Code §§22-5-4 and 22-18-6.

B. SUMMARY OF RULE:

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279, as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management System, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Promulgation of this rule will enable the Department of Environmental Protection to continue to be the primary enforcement authority for the RCRA Hazardous Waste Management System in West Virginia. Revisions to this rule are necessary to maintain consistency with current federal regulations, the Office of Waste Management's Hazardous Waste Management System rule 33CSR20, and to fulfill the State's responsibilities under the CAA.

Revisions to the rule include annual incorporation by reference updates. Definitions that are not used in the rule have been struck, and requirements pertaining to ignitable, reactive or incompatible wastes have been updated to reference a federal counterpart. The fee schedule for hazardous waste management facilities has been simplified.

This revised rule incorporates by reference the following provisions of 40 CFR Parts 260, 261, 262, 264, 265, 266 and 270 promulgated as of June 1, 2010: Hazardous Waste Technical Corrections and Clarifications Rule.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 3, 2010 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR25 - "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities"

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE
Charleston, WV 25304

Phone Number: (304) 926-047

Email: tammy.l.mowrer@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact above that resulting from currently applicable federal emission standards.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2011 Increase/Decrease (use "-")	2012 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR25 - "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities"

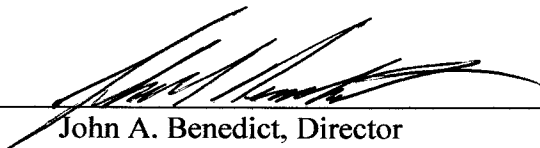
3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The above estimates reflect that there will be no anticipated changes in costs to administer this rule.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 9, 2010



John A. Benedict, Director

45CSR25

FILED
2010 JUN -9 AM 10:41

**TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 25
CONTROL OF AIR POLLUTION FROM HAZARDOUS WASTE
TREATMENT, STORAGE AND DISPOSAL FACILITIES**

§45-25-1. General.

1.1. Scope.

1.1.a. This rule establishes and adopts a program of regulation over air emissions and emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 as listed in Table 25-A. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.1.b. The purpose of this rule is to achieve and maintain such levels of air quality that will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous waste. Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in a manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse any person from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§22-18-1 et seq., and 22-5-1 et seq. Recognizing that each article has its own enforcement sections, it is the intent of the Secretary that enforcement shall be implemented in accordance with W.Va. Code §22-18-1 et seq., where practicable.

1.1.e. Permit applications shall be processed in accordance with the permitting procedures as set forth in W.Va. Code §22-18-1 et seq., 33CSR20, and this rule.

1.2. Authority. — W.Va. Code §§22-5-4 and 22-18-1 et seq.

1.3. Filing Date. — ~~April 30, 2010.~~

45CSR25

1.4. Effective Date. — ~~June 1, 2010~~.

1.5. Incorporation By Reference.

1.5.a. Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference the provisions contained in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 as listed in Table 25-A, effective ~~June 1, 2009~~ June 1, 2010.

1.5.b. This rule incorporates by reference the provisions contained in 33CSR20, "Hazardous Waste Management System" that are in effect on the date this rule becomes effective, except for any provision in 33CSR20 which incorporates by reference the Code of Federal Regulations.

1.6. Former Rules. — This legislative rule amends 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal" which was filed ~~May 8, 2009~~ April 30, 2010, and which became effective ~~June 1, 2009~~ June 1, 2010.

§45-25-2. Definitions.

2.1. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air Pollution", "statutory air pollution" has the meaning ascribed to it in W.Va. Code §22-5-2.

2.3. "Air Pollution Control Equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage, or disposal facilities.

2.4. "Best Available Control Technology" or "BACT", means an emission standard based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste treatment, storage or disposal facility which the Secretary, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for the facility through application of production processes or available methods, systems, or techniques. If the Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard shall, to the extent possible, set forth the emission reduction achievable by implementation of the design, equipment, work practice or operational standard, and shall provide for compliance by means which achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.

2.6. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

—2.7. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S.C. §1251 et seq.

45CSR25

~~2-8:~~ 2.7. “Department of Environmental Protection” or “DEP” means that Department of the West Virginia Department of Environmental Protection which is created by the provisions of W.Va. Code §22-1-1 et seq.

~~2-9:~~ 2.8. “Facility mailing list” means the mailing list for a facility maintained by U.S. EPA in accordance with 40 CFR §124.10(c)(1)(ix).

~~2-10:~~ 2.9. “Hazardous waste” means a hazardous waste as defined in 40 CFR §261.3.

~~2-11:~~ 2.10. “Infectious Medical Waste” shall have the meaning ascribed to it in 64CSR56 “Infectious Medical Waste”, (July 1, 1999), promulgated by the West Virginia Division of Health.

~~2-12.~~ “Particulate Matter” means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

~~2-13:~~ 2.11. “Pathological Waste” means waste material consisting of only human or animal remains, anatomical parts or tissue, the bags or containers used to collect and transport the waste material, and animal bedding (if applicable).

~~2-14:~~ 2.12. “RCRA” means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. §6901 et seq.

~~2-15:~~ 2.13. “RCRA Permit” means “West Virginia hazardous waste permit”. The following additional requirements shall apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR Part 270 to 40 CFR Part 124 shall be deemed to be references to the applicable provisions of subsections 5.1 through 5.14. To the extent of any inconsistency with 40 CFR Part 270, the specific provisions contained herein shall govern.

~~2-16:~~ 2.14. “Secretary” means the Secretary of the West Virginia Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

~~2-17.~~ “Steady State” means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

~~2-18:~~ 2.15. “U.S. EPA” means the United States Environmental Protection Agency.

~~2-19:~~ 2.16. Other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W.Va. Code §§22-5-1 et seq., or 22-18-1 et seq., or 33CSR20 “Hazardous Waste Management System” governing the State Hazardous Waste Management Act.

§45-25-3. Adoption of Standards.

3.1. The Secretary hereby adopts and incorporates by reference the definitions, lists, tables, appendices, conditions, or requirements from 33CSR20 “Hazardous Waste Management Rule System”, effective ~~June 1, 2009~~ June 1, 2010, except for any provisions in 33CSR20 which incorporate by reference the Code of Federal Regulations. In case of a conflict between the Division of Air Quality and the Division of Water and

45CSR25

Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Secretary has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the Secretary hereby adopts and incorporates by reference the provisions contained in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 as listed in Table 25-A, effective ~~June 1, 2008~~ June 1, 2010, with the following modifications:

3.2.a. Whenever the term "United States" is used, it shall also mean the State of West Virginia;

3.2.b. Whenever the terms "Administrator," "Regional Administrator," "Assistant Administrator for Solid Waste and Emergency Response" or "Secretary" are used, the term means the Secretary of the West Virginia Department of Environmental Protection;

3.2.c. Whenever the term "Environmental Protection Agency" is used the term also means the West Virginia Department of Environmental Protection; and

3.2.d. The distance provisions of 40 CFR §265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

§45-25-4. Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a list of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the Secretary, where appropriate:

4.1.a. Hazardous Waste Management Program under RCRA and 33CSR20;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45CSR14 or the CAA;

4.1.c. Nonattainment program under 45CSR19 or the CAA;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under 45CSR34 or the CAA;

4.1.e. Standards of Performance for New Stationary Sources under 45CSR16 or the CAA; and

4.1.f. Other relevant air pollution control permits including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule must comply with the personnel training requirements as specified by 40 CFR §264.16. ~~An outline of the training program and a description of how the training program is designed to meet actual job tasks must be submitted to the Secretary with Part B of the permit application.~~

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate these facilities to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of hazardous waste management facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, ~~must prevent reactions which:~~ shall comply with the general requirements for ignitable, reactive, or incompatible wastes set forth in 40 CFR §264.17.

~~4.4.a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and~~

~~4.4.b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.~~

4.5. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable air emission requirements as listed in Table 25-A.

4.6. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission requirements as listed in Table 25-A.

4.7. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission requirements as listed in Table 25-A.

4.8. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 CFR 264 including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

45CSR25

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of the potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage, or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. The Secretary may, on a case-by-case basis, establish performance standards for hazardous waste incinerators combustion for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that the standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Secretary may require the following data from the permit applicant:

4.13.a. Emissions of POHCs, hazardous combustion by-products, metals and hydrogen halides, including:

4.13.a.1. Mass emission rates from the stack, and

4.13.a.2. Concentration in the gas stream exiting the stack; and

4.13.b. Air dispersion estimates for those substances, including:

4.13.b.1. Meteorological data, and

4.13.b.2. Description of the air dispersion models, and

4.13.b.3. Assumptions underlying the air dispersion models used; and

4.13.c. Expected human and environmental exposure, including:

45CSR25

- 4.13.c.1. Topographic considerations,
- 4.13.c.2. Population distributions,
- 4.13.c.3. Population activities, and
- 4.13.c.4. Modes, intensity, and duration of exposure; and
- 4.13.d. Consequences of exposure, including:
 - 4.13.d.1. Dose-response curves for carcinogens,
 - 4.13.d.2. Health effects based on human or animal studies for other toxic constituents,
 - 4.13.d.3. Potential for accumulation of toxic constituents in the human body, and
 - 4.13.d.4. Statements of expected risk to individuals or populations.

4.14. Emergency Permit. – Notwithstanding any other provision in 40 CFR §270.61, in the event the Secretary finds an imminent and substantial danger to human health or the environment, the Secretary may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

4.14.a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;

4.14.b. Shall not exceed ninety (90) days in duration;

4.14.c. Shall clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;

4.14.d. May be terminated by the Secretary at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and

4.14.e. Shall be accompanied by public notice ~~as described under section 7~~ and include the following:

- 4.14.e.1. Name and address of the office granting the emergency authorization,
- 4.14.e.2. Name and location of the permitted hazardous waste management facility,
- 4.14.e.3. A brief description of the wastes involved,
- 4.14.e.4. A brief description of the action authorized and reasons for authorizing it,
- 4.14.e.5. Duration of the emergency permit; and

45CSR25

4.14.f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. -- The owner and operator of a pathological waste incinerator is not subject to the requirements of this rule unless the incinerator is charged with any mixture of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D. The owner and operator of a pathological waste incinerator shall design, construct and operate the facility in accordance with all applicable rules promulgated by the Secretary including, but not limited to, this rule, 45CSR6, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR30 and 45CSR34, as applicable.

§45-25-5. Permit Process.

5.1. Pre-application Public Meeting and Notice

5.1.a. Applicability. -- The requirements of subsection 5.1 shall apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. These requirements shall also apply to West Virginia hazardous waste management Part B permit applications seeking renewal of permits for hazardous waste management units, where the renewal application is proposing a significant change in facility operations. A "significant change" is any change that would qualify as a Class 3 permit modification pursuant to 40 CFR §270.42. These requirements do not apply to permit modifications under 40 CFR §270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.1.b. Prior to the submission of a West Virginia hazardous waste management Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

5.1.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subdivision 5.1.b, and copies of any written comments or materials submitted at the meeting, to the Secretary as a part of the Part B application, in accordance with 40 CFR §270.14(b).

5.1.d. The applicant must provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant must maintain, and provide to the Secretary upon request, documentation of the notice.

5.1.d.1. The applicant shall provide public notice in all of the following forms:

5.1.d.1.A. A newspaper advertisement. -- The applicant shall publish a notice, fulfilling the requirements in paragraph 5.1.d.2, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that the publication is necessary to inform the affected public. The notice must be published as a display advertisement;

5.1.d.1.B. A visible and accessible sign. -- The applicant shall post a notice on a clearly marked

sign at or near the facility, fulfilling the requirements in paragraph 5.1.d.2. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site;

5.1.d.1.C. A broadcast media announcement. -- The applicant shall broadcast a notice, fulfilling the requirements in paragraph 5.1.d.2, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Secretary; and

5.1.d.1.D. A notice to the permitting agency. -- The applicant shall send a copy of the newspaper notice to the Secretary and the Secretary shall forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is, or is proposed to be, located; and to each state agency having any authority under State law with respect to the construction or operation of the facility.

5.1.d.2. The notices required under paragraph 5.1.d.1 must include:

5.1.d.2.A. The date, time, and location of the meeting;

5.1.d.2.B. A brief description of the purpose of the meeting;

5.1.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

5.1.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

5.1.d.2.E. The name, address, and telephone number of a contact person for the applicant.

5.2. Public Notice Requirements at the Application Stage.

5.2.a. Applicability. -- The requirements of subsection 5.2 shall apply to all West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. These requirements shall also apply to hazardous waste management Part B permit applications seeking renewal of permits for hazardous waste management units upon the expiration of the existing permit. These requirements do not apply to permit modifications under 40 CFR §270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.2.b. Notification at application submittal. -- The Secretary shall provide public notice as required in subsection 5.2 when a Part B permit application has been submitted. The Secretary shall provide public notice to:

5.2.b.1. The applicant;

5.2.b.2. All persons on a mailing list developed under subparagraph 5.8.d.1.D;

5.2.b.3. The appropriate units of state and local government having jurisdiction over the area where the facility is proposed to be located; and to each state agency having any authority under State law with

respect to the construction or operation of the facility, that a Part B permit application has been submitted to the Secretary and is available for review; and

5.2.b.4. Any person otherwise entitled to receive notice under subdivision 5.2.b may waive the right to receive notice for any classes and categories of permits.

5.2.c. The notice shall be published within a reasonable period of time after the application is received by the Secretary. The notice must include:

5.2.c.1. The name and telephone number of the applicant's contact person;

5.2.c.2. The name and telephone number of the Secretary's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

5.2.c.3. An address to which people can write in order to be put on the facility mailing list;

5.2.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

5.2.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

5.2.c.6. The date that the application was submitted.

5.2.d. Concurrent with the notice required under subdivision 5.2.b, the Secretary must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Secretary's office.

5.3. Information Repository.

5.3.a. Applicability. — The following requirements apply to all applicants seeking West Virginia hazardous waste management permits for hazardous waste management units.

5.3.b. The Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Secretary shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Secretary shall notify the facility that it must establish and maintain an information repository.

5.3.c. The information repository shall contain all documents, reports, data, and information deemed necessary by the Secretary to fulfill the purposes for which the repository is established. The Secretary shall have the discretion to limit the contents of the repository.

5.3.d. The information repository shall be located and maintained at a site chosen by the facility. If the Secretary finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Secretary

shall specify a more appropriate site.

5.3.e. The Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Secretary shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

5.3.f. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary may close the repository at his or her discretion, based on the factors in subdivision 5.3.b.

5.4. Application for a Permit.

5.4.a. Any person who requires a permit shall complete, sign, and submit to the Secretary an appropriate application. Applications are not required for hazardous waste permits by rule pursuant to 40 CFR §270.60. The Secretary shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 CFR §270.11.

5.4.b. The Secretary shall review every application for completeness. Each application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Secretary within 30 days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application), should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Secretary may request additional information from the applicant but only when necessary to clarify, modify or supplement previously submitted materials. The request for additional information will not render an application incomplete.

5.4.c. If the applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions of W.Va. Code §§22-18-1 et seq. and 22-5-1 et seq.

5.4.d. If the Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

5.4.e. The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided for in subdivision 5.4.b.

5.4.f. For each application the Secretary shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

5.4.f 1. Prepare a draft permit;

5.4.f.2. Give public notice;

5.4.f.3. Complete the public comment period, including any public hearing; and

5.4.f.4. Issue a final permit.

5.5. Modification, Revocation and Reissuance, or Termination of Permits.

5.5.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Secretary's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§270.41 or 270.43. All requests shall be in writing and contain facts or reasons supporting the request.

5.5.b. If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Secretary may be appealed to the Air Quality Board in accordance with W.Va. Code §22B-1-1 et.seq.

5.5.b.1. If the Secretary tentatively decides to modify or revoke and reissue a permit under 40 CFR §§270.41 or 270.42(c), he or she shall prepare a draft permit under subsection 5.6 incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Secretary shall require the submission of a new application.

5.5.b.2. In a permit modification, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

5.5.b.3. "Classes 1 and 2 Modifications" as defined in 40 CFR §§270.42(a) and (b) are not subject to the requirements of this subsection.

5.5.c. If the Secretary tentatively decides to terminate a permit under 40 CFR §270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit prepared under subsection 5.6.

5.6. Draft Permits.

5.6.a. Once an application is complete, the Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

5.6.b. If the Secretary tentatively decides to deny the permit application, he or she shall issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as a draft permit. If the Secretary's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

5.6.c. If the Secretary tentatively decides to issue a permit, he or she shall prepare a draft permit that contains the following information:

5.6.c.1. All conditions under 40 CFR §§270.30 and 270.32;

5.6.c.2. All compliance schedules under 40 CFR §270.33;

5.6.c.3. All monitoring requirements under 40 CFR §270.31; and

5.6.c.4. Standards for treatment, storage, disposal and other permit conditions under 40 CFR §270.30.

5.6.d. All draft permits prepared by the Secretary shall be accompanied by a fact sheet if required under subdivision 5.7.a and shall be based on the administrative record, publicly noticed and made available for public comment.

5.6.e. In addition to the requirements of subsection 5.6, public notice of the preparation of a draft permit shall be given by the methods contained in 40 CFR §§270.2, 270.14, 270.30, 270.62, and 270.66.

5.7. Fact Sheet.

5.7.a. A fact sheet shall be prepared for each draft permit which the Secretary finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The Secretary shall send the fact sheet to the applicant and, on request, to any other person.

5.7.b. The fact sheet shall include when applicable:

5.7.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

5.7.b.2. The type and quantity of waste, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

5.7.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

5.7.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5.7.b.5. A description for reaching a final decision on a draft permit including;

5.7.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

5.7.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

5.7.b.5.C. Any other procedures by which the public may participate in the final decision; and

5.7.b.6. Name and telephone number of a person to contact for additional information.

5.8. Public Notice of Permit Actions and Public Comment Period.

5.8.a. Scope. The Secretary shall give public notice if the following actions have occurred:

5.8.a.1. A draft permit has been prepared; and

5.8.a.2. A hearing has been scheduled.

5.8.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under subsection 5.5. Written notice of that denial shall be given to the requester and to the permittee.

5.8.c. Timing. -- Public notice of the preparation of a draft permit, including a Notice of Intent to Deny a Permit Application, required under subdivision 5.8.a shall allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

5.8.d. Methods. -- Public notice of activities described in subdivision 5.8.a shall be provided by the following methods:

5.8.d.1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

5.8.d.1.A. The applicant;

5.8.d.1.B. Any other agency which the Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), W.Va. Code §22-5-1 et. seq., NPDES, 33 U.S.C. §1344, or sludge management permit for the same facility or activity;

5.8.d.1.C. Federal and state agencies with jurisdiction over fish, shell fish and wildlife resources and over coastal zones management plans, the advisory council on historic preservation, and the state historic preservation office, as applicable;

5.8.d.1.D. Persons on a mailing list developed by:

5.8.d.1.D.i. Including those who request in writing to be on the list;

5.8.d.1.D.ii. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

5.8.d.1.D.iii. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in regional and state funded newsletters, environmental bulletins,

or state law journals. The Secretary may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Secretary may delete from the lists the name of any person who fails to respond to the request;

5.8.d.1.E. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

5.8.d.1.F. To each state agency having any authority under state law with respect to the construction or operation of the facility.

5.8.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

5.8.d.3. In a manner constituting legal notice to the public under state laws; and

5.8.d.4. Any other method reasonably calculated to give actual notice of the action in question to the person potentially affected by it, including press releases or any other forum or medium to elicit public participation.

5.8.e. Public notices. -- All public notices issued shall contain the following minimum information:

5.8.e.1. Name and address of the office processing the permit action for which notice is being given;

5.8.e.2. Name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit;

5.8.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

5.8.e.4. Name, address and telephone number of a person from who interested persons may obtain further information, including copies of the draft permit and fact sheet and the application;

5.8.e.5. A brief description of the comment procedures required by subsections 5.9 and 5.10 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision;

5.8.e.6. The location of the administrative record, the times that which the record shall be open for public inspection; and

5.8.e.7. Any additional information considered necessary or proper.

5.8.f. Public notices for hearings. -- In addition to the general public notice described in subdivision 5.8.e, the public notice of a hearing shall contain the following information:

5.8.f.1. Reference to the date of previous public notices relating to the permit;

5.8.f.1.A. Date, time, and place of the hearing; and

5.8.f.1.B. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

5.8.g. In addition to the general public notice described in subdivision, all persons identified in subparagraphs 5.8.d.1.A, 5.8.d.1.B, and 5.8.d.1.C shall be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

5.9. Public Comments and Requests for Public Hearing. — During the public comment period provided under subsection 5.8, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsection 5.13.

5.10. Public Hearings.

5.10.a. The Secretary shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

5.10.b. The Secretary may also hold a public hearing at his or her discretion, whenever, for instance, a hearing might clarify one or more issues involved in the permit decision.

5.10.c. The Secretary shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under subdivision 5.8.c; whenever possible the Secretary shall schedule a hearing at a location in convenient to the nearest population center to the proposed facility.

5.10.d. Public notice of the hearing shall be given as specified in subsection 5.8.

5.10.e. Whenever a public hearing will be held the Secretary shall designate a presiding officer for the hearings who shall be responsible for its scheduling and orderly conduct.

5.10.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subsection 5.8 shall automatically be extended to the close of any public hearing. The hearing officer may also extend the comment period by so stating at the hearing.

5.10.g. A tape recording or written transcript of the hearing shall be made available to the public.

5.11. Reopening of the Public Comment Period.

5.11.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Secretary may take one or more of the following actions:

45CSR25

5.11.a.1. Prepare a new draft permit, appropriately modified, under subsection 5.6;

5.11.a.2. Prepare a revised fact sheet under subsection 5.7 and reopen the comment period; and

5.11.a.3. Reopen or extend the comment period under subsection 5.11 to give interested persons an opportunity to comment on the information or arguments submitted.

5.11.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subsection 5.8 shall define the scope of the reopening.

5.11.c. Public notice of any of the above actions shall be issued under subsection 5.8.

5.12. Issuance and Effective Date of Permit.

5.12.a. After the close of the public comment period on a draft permit the Secretary shall issue a final permit decision. The Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for appealing a decision on the permit. A final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

5.12.b. A final permit decision shall become effective thirty (30) days after the service of Notice of Decision unless:

5.12.b.1. A later effective date is specified in the decision;

5.12.b.2. Review is requested or an evidentiary hearing is requested; or

5.12.b.3. No comments requested change in the draft permit, in which case the permit shall become effective immediately upon issuance.

5.13. Response to Comments.

5.13.a. At the time that any final permit decision is issued, the Secretary shall issue a response to comments. This response shall:

5.13.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

5.13.a.2. Briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

5.13.b. The response to comments shall be available to the public.

5.14. Administrative Record.

5.14.a. The provisions of a draft permit prepared under subsection 5.6 shall be based on the

administrative record consisting of:

- 5.14.a.1. The application and any supporting data furnished by the applicant;
- 5.14.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;
- 5.14.a.3. The fact sheet if required;
- 5.14.a.4. All documents cited in the fact sheet; and
- 5.14.a.5. Other documents contained in the supporting file for the draft permit.
- 5.14.b. The Secretary shall base final permit decisions on the administrative record consisting of:
 - 5.14.b.1. Administrative record for the draft permit;
 - 5.14.b.2. All comments received during the public comment period provided under subsection 5.5, including any extension or reopening under subsection 5.11;
 - 5.14.b.3. The tape or transcript of any hearing(s) held under subsection 5.10;
 - 5.14.b.4. Any written material submitted at the hearing;
 - 5.14.b.5. The response to comments required by subsection 5.13 which identified and supports any change made in the draft permit and any new material placed in the record under subsection 5.13;
 - 5.14.b.6. Other documents contained in the supporting file for the permit;
 - 5.14.b.7. An addendum to the fact sheet if needed; and
 - 5.14.b.8. The final permit.
- 5.14.c. The administrative record shall be complete on the date the final permit is issued.
- 5.14.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 5.14.a and 5.14.b, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

5.15. Public Access to Information.

5.15.a. Any record, report, or information and any permit, permit application, and related documentation within the Secretary's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Secretary that the records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Secretary shall consider, treat, and protect the records as confidential pursuant to W.Va. Code §§22-18-1-et seq. and 22-5-1-et seq.

45CSR25

5.15.b. It shall be the responsibility of the person claiming any information as confidential under the provision of subdivision 5.15.a to comply with the requirements of 45CSR31.

5.16. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W.Va. Code, §§22-18-1 et seq. and 22-5-1 et seq.

§45-25-6. Exclusions and Exemptions.

6.1. Wastes and materials excluded in 33CSR20; are excluded from the requirements of this rule.

6.2. Except for recyclable materials exempt pursuant to 33CSR§20-3, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of section 4.

6.3. The provisions of 62 Federal Register 52622-52642, dated October 8, 1997 (Project XL Site-Specific Rulemaking for Merck & Co., Inc., Stonewall Plant, Elkton, VA: Final Rule) are hereby excluded. These provisions include 40 CFR §§264.1030(d), 264.1050(g), 264.1080(e), 265.1030(c), 265.1050(f), and 265.1080(e).

6.4. Any pathological waste incinerator not subject to this rule under subsection 4.15 shall be subject to 45CSR6 or 45CSR18, as applicable.

§45-25-7. Application Fee.

7.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage, or disposal facility shall submit as part of the application a money order or cashier's check payable to the "Air Pollution Control Fund" of the State Treasury. The fee shall be determined by the schedule set forth below:

Activity	Fee
a. Hazardous Waste Management Facilities:	<u>\$5,000</u>
Treatment design capacity more than 1,000 ton/yr	\$5,000
Treatment design capacity less than 1,000 ton/yr	\$5,000
b. Class 2, 3 Modifications or Renewals of Permits and 40 CFR §270.41 for Hazardous Waste Management Facilities	\$1,000
c. Class 1 Modifications	\$ 500

7.2. These application fees shall be in addition to any fee required under any other rule of the West Virginia Department of Environmental Protection.

§45-25-8. Inconsistency Between Rules.

8.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

45CSR25

TABLE 25-A

Item No.	CFR No.	Part No.	Subpart No.	Title
1.	40 CFR	- 264, 265	- O	- Incinerator
2.	40 CFR	- 270.19	- B	- Specific Requirements for Incinerators
		- 270.42	- D	- Permit Modification at the Request of the Permittee
			- Appendix	- Appendix I
3.	40 CFR	- 270.62	- F	- Hazardous Waste Incinerator Permits
4.	40 CFR	- 270.72	- G	- Changes During Interim Status
5.	40 CFR	- 264	- X	- Miscellaneous Units
6.	40 CFR	- 270.23	- B	- Specific Requirements for Miscellaneous Units
7.	40 CFR	- 264, 265	- AA	- Air Emission Standards for Process Vents
8.	40 CFR	- 270.24	- B	- Specific Requirements for for Process Vents
9.	40 CFR	- 264, 265	- BB	- Air Emission Standards for Equipment Leaks
10.	40 CFR	- 270.25	- B	- Specific Requirements for Equipment Leaks
11.	40 CFR	- 264, 265	- CC	- Air Emission Standards for
		- 264.179, 265.178	- I	Tanks, Surface
		- 264.200, 265.202	- J	Impoundments, and Containers
		- 264.232, 265.231	- K	
		- 265	- Appendix	- Appendix VI
12.	40 CFR	- 270.14(b)(5)	- AB	- General Information Requirements
13.	40 CFR	- 270.27	- B	- Specific Requirements for Air Emissions Control for Tanks, Surface Impoundments and Containers
14.	40 CFR	- 265	- P	- Thermal Treatment

45CSR25

Item No.	CFR No.	Part No.	Subpart No.	Title
15.	40 CFR	- 266	- H	- Hazardous Waste Burned in Boilers and Industrial Furnaces
			- Appendices	- Appendix 1 to XIII
16.	40 CFR	- 270.22	- B	- Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
17.	40 CFR	- 270.66	- F	- Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
18.	40 CFR	- 279.23	- C	- On-site Burning In Space Heater
19.	40 CFR	- 279	- G	- Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
20.	40 CFR	- 270.14(b)(22)	- B	- Permit Application
21.	40 CFR	- 270.1(c)(2)(viii)(C)	- A	- General Information
22.	40 CFR	- 270.30(m)	- B	- Information repository
23. <u>20.</u>	40 CFR	- 261.6 (c)(1)	- A	- Requirements for Recyclable Materials
		261.4	-	- Exclusions
<u>21.</u>	<u>40 CFR</u>	- <u>261.7</u>	-	- <u>Residues of hazardous waste to empty containers</u>
24. <u>22.</u>	40 CFR	- 261.38	- E	- Comparable/Syngas Fuel Exclusions/ <u>Exemptions</u>
25. <u>23.</u>	40 CFR	- 262.34	- C	- Accumulation Time
26. <u>24.</u>	40 CFR	- 260.11	- B	- References
27. <u>25.</u>	40 CFR	- 264.15(b)(4)	- B	- General Inspection Requirement
28. <u>26.</u>	40 CFR	- 264.73(b)(6)	- E	- Operating Records
29. <u>27.</u>	40 CFR	- 270.235	- I	- Options for Incinerators and Cement and Lightweight Aggregate Kilns to Minimize Emissions from Startup, Shutdown, and Malfunction Events.

45CSR25

28. 40 CFR : 264.17 B : General Requirements for Ignitable, Reactive, or Incompatible Wastes.

This technical correction is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

This technical correction does not involve changes to the technical standards related to test methods or monitoring requirements; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

This technical correction also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. Section 808 allows the issuing Agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, we have determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment because only simple typographical errors are being corrected that do not substantially change the Agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. EPA has therefore established an effective date of April 19, 2010. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of this action in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective April 19, 2010.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference,

Reporting and recordkeeping requirements.

Dated: March 11, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AAAAAAA—[Amended]

§ 63.11563 [Amended]

■ 2. Section 63.11563 is amended by redesignating paragraphs (l), (m) and (n) to become paragraphs (g), (h), and (i), respectively.

■ 3. Section 63.11564 is amended by revising paragraphs (c)(8) and (c)(9) to read as follows:

§ 63.11564 What are my notification, recordkeeping, and reporting requirements?

* * * * *

(c) * * *

(8) A copy of the site-specific monitoring plan required under § 63.11563(b) or (g).

(9) A copy of the approved alternative monitoring plan required under § 63.11563(h), if applicable.

* * * * *

[FR Doc. 2010-5964 Filed 3-17-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 268 and 270

[EPA-RCRA-2008-0678; FRL-9127-9]

RIN 2050-AG52

Hazardous Waste Technical Corrections and Clarifications Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking Direct Final action on a number of technical changes that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste

generator requirements, standards for owners and operators of hazardous waste treatment, storage and disposal facilities, standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program, and the hazardous waste permit program. These changes correct existing errors in the hazardous waste regulations that have occurred over time in numerous final rules published in the **Federal Register**, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation (DOT) regulations that have changed since the publication of various RCRA hazardous waste final rules.

DATES: This Direct Final Rule is effective on June 16, 2010 without further notice unless EPA receives adverse comments by May 3, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the Direct Final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2008-0678 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* rcra-docket@epa.gov and oleary.jim@epa.gov. Attention Docket ID No. EPA-HQ-RCRA-2008-0678.
- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-RCRA-2008-0678.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2008-0678. Please include a total of 2 copies.
- *Hand Delivery:* EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA-2008-0678. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>.

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the HQ-Docket Center, Docket ID No. EPA-HQ-RCRA-2008-0678, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery (MC:5304P),

1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone: (703) 308-8827; or e-mail: oleary.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposed rule to adopt the provisions in this Direct Final rule if adverse comments are filed. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If we receive adverse comment on any individual correction, we will publish a timely withdrawal in the **Federal Register** to notify the public about a specific paragraph or amendment in the Direct Final rule that will not take effect.

II. Does This Action Apply to Me?

Entities potentially affected by this action include facilities subject to the RCRA hazardous waste regulations and States implementing the RCRA hazardous waste regulations.

III. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

IV. Acronyms

Acronym	Definition
CFR	United States Code of Federal Regulations.
EPA	United States Environmental Protection Agency.
HSWA	Hazardous and Solid Waste Amendments.
OMB	Office of Management and Budget.
RCRA	Resource Conservation and Recovery Act.
U.S.C.	United States Code.

V. Preamble

A. What Is the Legal Authority for This Direct Final Rule?

This rule is authorized under Sections 1004, 3001, 3002, 3003, 3004 and 3005 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6903, 6921-6925.

B. Why Are We Amending Various Sections of Parts 260-266, 268 and 270?

In the process of publishing numerous final rules in the **Federal Register**, typographical errors, incorrect or outdated citations, and omissions have occurred. Similarly, the Agency has sometimes failed to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations when new rules were promulgated. These inadvertent errors and oversights have sometimes resulted in confusion and inefficiency on the part of the regulated community and Federal and State regulators implementing the hazardous waste regulatory program.

This rule addresses these problems by correcting the RCRA hazardous waste management regulations—specifically the general requirements under 40 CFR part 260, the hazardous waste identification requirements under 40 CFR part 261, the manifesting and hazardous waste generator requirements under 40 CFR part 262, the hazardous waste transporter requirements under 40 CFR part 263, the related manifesting and emergency preparedness requirements under 40 CFR parts 264 and 265, the requirements for recycling of hazardous wastes in a manner constituting disposal under 40 CFR part 266, the land disposal restrictions requirements under 40 CFR part 268, and the hazardous waste permit program requirements under 40 CFR part 270. Several re-designation and format corrections are also included for several

paragraphs in the permitting and interim status requirements under 40 CFR parts 264 and 265.

However, unlike most of the technical corrections and clarifications in today's rule, the changes associated with the hazardous waste manifest regulations are closely interrelated, and involve changes to several sections and paragraphs in 40 CFR parts 262, 264 and 265. Therefore, in the interest of clarity, we describe all of the changes associated with the hazardous waste manifest in Section V.C.10.

When the 40 CFR part 267 standards for owners and operators of hazardous waste facilities operating under a standardized permit were promulgated in September, 2005, EPA failed to make conforming changes to certain paragraphs in 40 CFR parts 260–263 and 266. This rule addresses that inadvertent oversight. Affected sections are identified at the end of Section V.C.7.

Today's Direct Final rule is similar to the Final rule published on July 14, 2006. See 71 FR 40254, Parts 260, 261 *et al.* Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; Final rule. EPA continues to review its regulations for additional technical corrections or errors and will address any such edits in forthcoming rules.

Today's action makes approximately 90 changes to 40 CFR parts 260–266, 268 and 270. References to the 40 CFR sections where technical corrections are being made are organized by part. In addition, EPA provides a description and explanation of the changes in the preamble to today's Direct Final rule.

C. Description of Direct Final Amendments to Parts 260–266, 268 and 270

1. Corrections to 40 CFR Part 260 (Hazardous Waste Management System: General)

In 40 CFR part 260, EPA is amending the following sections in order to make a number of changes: Section 260.10 and Appendix I

a. 40 CFR 260.10: In 40 CFR part 260, EPA is amending 40 CFR 260.10 to correct the date cited in the definition of “New hazardous waste management facility or new facility.” The date is changed from “October 21, 1976” to “November 19, 1980.” This date refers to the date a facility began operation, or for which construction commenced.

A review of the May 19, 1980 preamble to the first set of RCRA hazardous waste regulations shows that EPA was aware that the October 21, 1976 date specified in the statute was an

unrealistic date to establish, and anticipated statutory amendments to correct this problem. Specifically, in May 1980, EPA wrote:

“Definition of Existing Facility”

Several commenters pointed out what they perceived as a serious fault in Section 3005(e) of RCRA, which is that the Section limits interim status to owners and operators of facilities “in existence” on or before October 21, 1976. The statute requires that, in order to operate legally, facilities which have come into existence after October 21, 1976, must obtain a permit by the effective date of the Section 3005 regulations (*i.e.*, within 180 days after the promulgation date of the regulations). Because it is unlikely that permits can be issued within 180 days for all facilities not “in-existence” by October 21, 1976, the commenters felt that the language of the statute was unfair to the owners and operators of these facilities.

“EPA agrees that the language of the statute as it now stands would make the RCRA program unworkable. However, the language of RCRA is clear and EPA has had no alternative but to follow it in the regulations. As the preamble to the Part 122 regulations discusses, EPA expects that amendments to RCRA now in conference will be passed shortly and will cure this problem.” (45 FR 33068, May 19, 1980)

RCRA Section 3005(e) related to Interim Status facilities was amended to correct this problem. Section 3005(e)(1) now reads: “Any person who—(A) owns or operates a facility required to have a permit under this section which facility—(i) was in existence on November 19, 1980, or (ii) is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit under this section * * * shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator * * *.”

Therefore, EPA is amending § 260.10 to make this conforming change by revising the date “October 21, 1976” to read “November 19, 1980.” More specifically, the regulatory citation will read as follows:

“New hazardous waste management facility or new facility” means a facility which began operation, or for which construction commenced after November 19, 1980.”

Note that the definition at § 260.10 for “Existing hazardous waste management facility” includes the correct date (*i.e.*, November 19, 1980), which further supports this conforming change.

b. 40 CFR part 260, Appendix I: In 40 CFR part 260, EPA is deleting the appendix entitled, Appendix I to Part 260: Overview of Subtitle C Regulations, which includes a brief discussion of the

hazardous waste regulations, along with associated Figures 1–4. This Appendix was initially developed when the hazardous waste regulations were first promulgated in May 1980. Since then, the regulations have changed a number of times and this Appendix is no longer accurate. Therefore, we are deleting it to avoid any confusion.

2. Corrections to 40 CFR Part 261 (Identification and Listing of Hazardous Waste)

In 40 CFR part 261, EPA is amending the following sections in order to correct typographical errors, include correct citations, and incorporate conforming changes: Sections 261.1, 261.2, 261.4, 261.5, 261.6, 261.7, 261.23, 261.30, 261.31, 261.32, 261.33 and Appendix VII to part 261.

a. 40 CFR 261.1(c)(10): In 40 CFR part 261, EPA is amending this paragraph to correct a citation error by revising “§ 261.4(a)(13)” to read “§ 261.4(a)(14)” in the parenthetical note at the end of paragraph (c)(10). 40 CFR 261.1(c)(10) defines “Processed scrap metal.” As part of this definition, the parenthetical note at the end of the paragraph states:

“(Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§ 261.4(a)(13)).”

However, § 261.4(a)(13) relates to excluded scrap metal, not shredded circuit boards. The correct citation for shredded circuit boards being recycled is found at § 261.4(a)(14). Thus, we are correcting this incorrect citation.

b. 40 CFR 261.2(c), Table 1: In 40 CFR part 261, EPA is amending § 261.2(c), Table 1 by removing the phrase, “Scrap metal other than excluded scrap metal (see 261.1(c)(9))” and replacing it with “Scrap metal that is not excluded under § 261.4(a)(13).” This change more concisely describes scrap metal that is subject to the RCRA Subtitle C regulations, namely regulated scrap metal. This phrase also is consistent with paragraph 40 CFR 261.6(a)(3)(ii) related to the requirements for regulated scrap metal.

c. 40 CFR 261.4(a)(17)(vi): In 40 CFR part 261, EPA is amending § 261.4(a)(17)(vi) to correct a citation error by revising the citation “paragraph (a)(7)” to read “paragraph (b)(7).”

The reference to “paragraph (a)(7),” which relates to spent sulfuric acid, was incorrectly revised in the final rule published in 67 FR 11254 (March 13, 2002) and should have properly referred to paragraph (b)(7). Thus, we are correcting this incorrect citation.

d. 40 CFR 261.5(e)(1): In 40 CFR part 261, EPA is amending this paragraph to read, "A total of one kilogram of acute hazardous wastes listed in §§ 261.31 or 261.33(e)."

This change removes a reference to acute hazardous wastes listed under "§ 261.32," because currently, there are no acute hazardous wastes listed in § 261.32.

e. 40 CFR 261.5(e)(2): In 40 CFR part 261, EPA is amending this paragraph to remove the reference to acute hazardous wastes listed under "§ 261.32," because, as noted previously, there are no acute hazardous wastes listed in § 261.32.

EPA is also amending the parenthetical comment at the end of § 261.5(e)(2) to correct the term "generators of greater than 1,000 kg" to read "generators of 1,000 kg or greater" and to eliminate the redundant term "non-acutely."

Specifically, § 261.5(e) addresses those amounts of acute hazardous waste that are subject to full regulation under 40 CFR parts 262–268, 270, and 124, and the notification requirements of Section 3010 of RCRA. At the end of § 261.5(e)(2) is a comment which reads:

[Comment: "Full regulation" means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]

This comment describes full regulation as regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month (a large quantity generator), but 40 CFR 262.34(d) lists conditions for facilities who generate greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month (e.g., a small quantity generator). Therefore, facilities that generate exactly 1,000 kg are not included in either range. At 40 CFR 262.34(g) and (h), we state that generators who generate 1,000 kilograms of hazardous waste per month and generators that generate greater than 1,000 kilograms of hazardous waste per calendar month (as this quantity relates to generators of wastewater treatment sludges from electroplating operations (EPA Hazardous Waste No. F006)) are subject to the same regulatory standards. Likewise, at 40 CFR 262.34(j), we state that generators who generate 1,000 kilograms of hazardous waste per calendar month and generators that generate greater than 1,000 kilograms of hazardous waste per calendar month (as this quantity relates to members of the Performance Track program) are subject to the same regulatory standards.¹

Therefore, our intent always has been to regulate facilities generating exactly 1,000 kilograms of hazardous waste in a calendar month the same as those generators who generate greater than 1,000 kilograms of hazardous waste in a calendar month (i.e., large quantity generators) rather than the requirements for facilities generating greater than 100 kilograms in a calendar month, but less than 1,000 kilograms of hazardous waste in a calendar month, (i.e., small quantity generators). Clarifying the parenthetical comment at the end of § 261.5(e)(2) resolves the inconsistency that exists between this comment and §§ 262.34(d), 262.34(g), 262.34(h) and 262.34(j).

Also, since this comment refers to non-acutely hazardous wastes, use of the term "non-acutely" is redundant and unnecessary.

f. 40 CFR 261.5(f): In 40 CFR part 261, EPA is amending this paragraph to read, "In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:"

This change clarifies that the relevant paragraphs of section 261.5 (e) are both (e)(1) and (e)(2). The current regulation references paragraph (e)(1) or (2).

g. 40 CFR 261.5(g): In 40 CFR part 261, EPA is amending this paragraph to read, "In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:"

This paragraph currently refers to "in quantities of less than 100 kilograms of hazardous waste" which is inconsistent with 40 CFR 261.5 (a) which describes a conditionally exempt small quantity generator as one who generates no more than 100 kilograms of hazardous waste in a calendar month (i.e., 100 kilograms or less). Thus, this change makes 40 CFR 261.5(g) consistent with 40 CFR 261.5(a).

h. 40 CFR 261.5(g)(2): In 40 CFR part 261, EPA is amending this paragraph to read, "The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1,000 kilograms of his hazardous wastes, all of those accumulated wastes

are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;"

This change clarifies the amount of hazardous wastes a generator can generate in a calendar month and still be classified as a small quantity generator; e.g., greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month. Similarly, this change is consistent with paragraphs § 262.34(d)–(f).²

i. 40 CFR 261.6(a)(2): In 40 CFR part 261, EPA is making a conforming change to add "268" to § 261.6(a)(2) so that it reads " * * and all applicable provisions in parts 268, 270, and 124 of this chapter." This change is necessary to be clear that the requirements of part 268 are applicable to the subject of this provision (recycled wastes regulated under part 266). An examination of § 261.6(a)(3) clearly shows that the Agency was aware that Part 268 is applicable to recycled wastes. Thus, the failure to cite part 268 in paragraph (a)(2) was an oversight. A December 20, 1989 memo from EPA Headquarters to EPA Region 1 (RCRA Online 11482), a copy of which is included in today's docket, explained this oversight and the need to correct this error in a future rulemaking.

j. 40 CFR 261.6(a)(2)(ii): In 40 CFR part 261, EPA is amending § 261.6(a)(2)(ii) to read "Hazardous waste burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of part 264 or 265 of this chapter (40 CFR part 266, subpart H)."

Specifically, § 261.6(a)(2) indicates which subparts of part 266 govern the management of certain recycled materials. Paragraph § 261.6(a)(2)(ii) currently indicates that hazardous waste burned for energy recovery in boilers and industrial furnaces is covered under Subpart H of part 266. Prior to 1991, hazardous waste burned for energy recovery was subject to Subpart D of part 266, and § 261.6(a)(2)(ii) specifically referred to Subpart D. In

¹ EPA terminated the Performance Track Program on May 14, 2009 (74 FR 22741) and thus the

program's incentives, including the hazardous waste incentives, are no longer available. EPA plans to take steps to rescind the final rules that enabled these incentives.

² The Agency is also adding part 267 to this CFR section, i.e., § 261.5(g). See discussion later in the preamble for the basis of this change.

1991, the boiler and industrial furnace rule expanded the scope of the part 266 boiler and industrial furnace regulations to address burning for both energy recovery and materials recovery, and the Subpart D regulations were replaced with regulations under Subpart H of part 266. The 1991 rule amended the reference in § 261.6(a)(2)(ii) from subpart D to subpart H of part 266, but inadvertently omitted the parallel conforming change to the text of (a)(2)(ii) to reflect the expanded scope of the regulations, which now cover both burning for energy recovery and burning for material recovery. This amendment makes that conforming change.

k. 40 CFR 261.7(a)(1), (a)(2), (b)(1) and (b)(3): In 40 CFR part 261, EPA is making conforming changes to §§ 261.7(a)(1) and (a)(2) to add "part 266."

Specifically, an examination of the **Federal Register** from 1980 to the present reveals that §§ 261.7(a)(1) and (a)(2) have been amended several times to include additional parts to the list of applicable regulations as the RCRA regulatory program evolved. As examples, paragraphs (a)(1) and (a)(2) of § 261.7 were amended in 1983 (48 FR 14294) to remove part 122 and substitute part 270; were amended in 1986 to include part 268 (the Land Disposal Restrictions program) (51 FR 40637); and were amended again in 2005 to incorporate part 267 (the Standardized Permit program) (70 FR 53453). However, references to part 266, which addresses Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, were not added when part 266 was promulgated. Because part 266 is one of the parts applicable to the wastes discussed in § 261.7, it should have been added to the lists of applicable parts. The Agency is now correcting this oversight.

In this section, EPA is also amending paragraphs (b)(1) and (b)(3) to remove the reference to acute hazardous wastes listed in "§ 261.32," because currently, there are no acute hazardous wastes listed in § 261.32.

l. 40 CFR 261.23(a)(8): In 40 CFR part 261, EPA is amending this paragraph to read, "It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53."

Specifically, 40 CFR 261.23(a)(8) cross-references Department of Transportation (DOT) regulations addressing forbidden explosives, Class A explosives, and Class B explosives. However, these cross-references are out of date with the current DOT regulations, and the referenced sections

either no longer exist or no longer address these explosives. This change modifies the rule to provide the correct citations.

m. 40 CFR 261.30(d). In 40 CFR part 261, EPA is amending this paragraph to read, "The following hazardous wastes listed in § 261.31 are subject to the exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027."

The existing paragraph indicates that acutely hazardous wastes are listed in § 261.31 and § 261.32. However, because there are no acute hazardous wastes currently listed in § 261.32, we are removing the reference to § 261.32.

n. 40 CFR 261.31: In 40 CFR part 261, EPA is amending the listing for EPA Hazardous Waste No. F037 by correcting the phrase " * * * oil cooling wastewaters" to read " * * * oily cooling wastewaters." It is clear from the 1990 and 1998 **Federal Register** notices promulgating and subsequently revising this listing that the correct phrase is "oily cooling wastewaters" (55 FR 46396 and 63 FR 42185, respectively). This phrase is also consistent with the listing description of F037 and F038 in the table in 40 CFR 268.40 and Table 302.4—List of Hazardous Substances and Reportable Quantities.

o. 40 CFR 261.32: In 40 CFR part 261, EPA is amending the listing for K107, by correcting the misspelled chemical name " * * * carboxylic acid hydrazines" to read " * * * carboxylic acid hydrazides." That this is a misspelling is clear from the original listing background document supporting the K107 listing which discusses "carboxylic acid hydrazides." The proposed rule (December 20, 1984; 49 FR 49559) included this error in the listings for K107, K108, K109, and K110. The error was corrected in the final rule (May 2, 1990; 55 FR 18505) for all the listings except K107.

p. 40 CFR 261.32: In 40 CFR part 261, EPA is amending the table in this section to remove the section headings that have no waste codes included: "Primary Copper:", "Primary Lead:", "Primary Zinc:", and "Ferroalloys:".

Specifically, the entries for Hazardous Waste Nos. K064 (Primary Copper), K065 (Primary Lead), K066 (Primary Zinc) and K090 and K091 (Ferroalloys) were removed from the table in 1999 (64 FR 56470, October 20, 1999; see also 63 FR 28599–29600, May 26, 1998). Although these were the only waste codes listed in the sections having the same title, the section headings were inadvertently not removed with the waste codes. Thus, they are being deleted in today's Direct Final rule.

q. 40 CFR 261.33(f): In 40 CFR part 261, EPA is amending this section to revise the listing for U239, "Benzene, dimethyl- (I,T)" to read "Benzene, dimethyl- (I)." Inclusion of the "T" (for toxicity) in the parentheses was an oversight because this chemical was listed only for ignitability ("T") and not for toxicity ("T"). This error was first identified in 1990, but the Agency failed to correct this error in previous technical correction rules (see memo from Scarberry to Kreider (April 5, 1990, RO115020), a copy of which is included in today's docket). This correction is also consistent with the same listing under the more common name for U239, "xylene," which has only an "T" in the parentheses.

r. Part 261, APPENDIX VII: In 40 CFR part 261, EPA is amending this section to remove the entries "K064," "K065," "K066," "K090," and "K091." In the final rule published in 64 FR 56470 (October 20, 1999), see also 63 FR 28599–29600, May 26, 1998, EPA removed these K-listed wastes from § 261.32, but failed to make the necessary conforming changes in Appendix VII of part 261. This amendment makes that conforming change.

3. Corrections to 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste)

In 40 CFR part 262, EPA is amending the following sections in order to clarify regulatory citations and address incorrect citations: Sections 262.10, 262.11, 262.23,³ 262.34, 262.41, 262.42 and 262.60.⁴

a. 40 CFR 262.34(a): In 40 CFR part 262, EPA is amending this paragraph by revising 40 CFR 262.34(a) to read, "A generator who generates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:"

Specifically, the current language in 40 CFR 262.34(a) fails to clarify that this paragraph applies to large quantity generators only—that is, generators who generate 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month. Small quantity generators can accumulate hazardous waste on site for 180 days (or 270 days

³ Discussed under section V.C.10.

⁴ Note: The changes at 40 CFR 262.10, 262.11 and 262.41 refer to the conforming change to include part 267.

if he must transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or without having interim status.

b. 40 CFR 262.34(a)(1)(iv)—as related to Closure: EPA is amending CFR 262.34(a) by moving a sentence from one portion of the regulation to another, more appropriate, portion of the regulation where it will be easier to find.

Specifically, EPA is moving the language that currently appears after 40 CFR 262.34(a)(1)(iv)(B) which states that generators accumulating hazardous waste on-site for 90 days or less without a permit or interim status are exempt from all the requirements in subparts G and H of 40 CFR part 265, except for 40 CFR 265.111 and 265.114.

This amendment is necessary because this sentence stating the requirements for large quantity generators closing their waste accumulation units is incorrectly and awkwardly found after 40 CFR 262.34 (a)(1)(iv)(B), when it should be elsewhere in the regulation. That is, this section of the regulations has no relationship to the closure requirements, but instead addresses the documentation needed by a large quantity generator accumulating hazardous waste in containment buildings to demonstrate that the unit has been emptied at least once every 90 days. Thus, requirements for large quantity generators closing their 90-day waste accumulation units should properly be located in another portion of this regulation. EPA has expressed this same intent in a Hotline document in the December 1998 Hotline Monthly Report entitled, Generator Closure Requirements, a copy of which is included in today's docket. (Also see RCRA Online 14321.⁵)

EPA is moving this sentence to a new section 40 CFR 262.34(a)(5). This new location for this long-standing closure requirement for large quantity generators will make it less likely that users of the regulations will miss the provision and thus be unaware of its existence. Putting this sentence in a new subparagraph (5) of paragraph (a) following existing subparagraphs (1) through (4) also makes it much clearer that the closure provision is one of the five existing requirements applicable to large quantity generators accumulating waste on-site.

c. 40 CFR 262.34(a)(2)—as related to Marking: In 40 CFR part 262, EPA is amending this paragraph by revising 40 CFR 262.34(a)(2) to read “each container and tank” instead of “each container.”

Specifically, § 262.34(a)(3) makes clear that displaying the words “Hazardous Waste” is required for both containers and tanks accumulating waste, but the words “and tank” were inadvertently omitted from the text of § 262.34(a)(2) which discusses displaying the accumulation start date. In the preamble to the March 24, 1986 *Federal Register* (51 FR 10146 and 51 FR 10160), EPA makes clear that under 40 CFR 262.34 both containers and tanks must be marked with accumulation start dates. EPA also explained that both containers and tanks must be marked with accumulation start dates in the June 2003 RCRA Call Center Monthly Report, a copy of which is included in today's docket. This amendment corrects this omission.

d. 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4)—as related to the Land Disposal Restrictions (LDR): In 40 CFR part 262, EPA is amending these paragraphs by revising 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4) to delete “40 CFR 268.7(a)(5)” and substitute the words “all applicable requirements under 40 CFR part 268.”

Both 40 CFR 262.34(a)(4) and 40 CFR 262.34 (d)(4) specifically state that large quantity generators and small quantity generators must comply only with 40 CFR 268.7(a)(5) of the land disposal restriction requirements. This provision addresses waste analysis plans. However, the limited reference to 40 CFR 268.7(a)(5) is in error. As stated elsewhere in the hazardous waste regulations, both small and large quantity generators are subject to the full land disposal restriction requirements program, and not just the requirement to develop waste analysis plans. For example, 40 CFR 262.11 points to the need for materials subject to the hazardous waste regulations to comply with all applicable regulations under 40 CFR part 268 (Land Disposal Restrictions). Similarly, 40 CFR 268.1(b) is clear that the LDR requirements “apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage and disposal facilities.” Thus, EPA is correcting this error by revising these paragraphs to properly conform to the requirements elsewhere for large quantity generators and small quantity generators to comply with all applicable regulations under 40 CFR part 268.

e. 40 CFR 262.34(b): Consistent with the changes being made in section 262.34(a) of today's Direct Final rule, EPA is amending 40 CFR 262.34 by revising the first sentence of 40 CFR 262.34(b) to read, “A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267 and the permit requirements of 40 CFR 270 unless he has been granted an extension to the 90-day period.” (See discussion in section V.3.a regarding paragraph 262.34(a) for explanation of change.)

f. 40 CFR 262.34(c)(1): EPA is amending 40 CFR 262.34 by revising 40 CFR 262.34(c)(1) to read: “A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraphs (a) or (d) of this section provided he:”

This revision clarifies that the satellite accumulation provisions for large quantity generators also are applicable to small quantity generators, and that this provision applies to acutely hazardous wastes listed under § 261.31 as well. As currently constructed, the regulatory citations at 40 CFR 262.34 associated with satellite accumulation are only found under the requirements for large quantity generators, or paragraph (a). The preamble to the final rule promulgating this provision published in the March 24, 1986 *Federal Register* makes clear that the satellite accumulation provisions also are applicable to small quantity generators. The regulatory text omitted the appropriate reference to implement this intent. See 51 FR 10162. In addition, other EPA documents state that the satellite accumulation provisions apply to small quantity generators as well. See, for example, Memorandum from Robert Springer, Director Office of Solid Waste to Regions 1–10, *Frequently Asked Questions about Satellite Accumulation Areas*, March 17, 2004 (RO 14703), a copy of which is included in today's docket.

With respect to including acutely hazardous wastes listed under § 261.31, when the dioxin listings for acutely

⁵ RCRA Online is an electronic database of selected letters, memoranda, questions and answers, publications, and other outreach materials, written by EPA's Office of Solid Waste (now the Office of Resource Conservation and Recovery) since 1980.

hazardous wastes listed under § 261.31 were promulgated in 1985 (see 50 FR 2000), we failed to make conforming changes to the satellite accumulation regulations found at 40 CFR 262.34 (c)(1) and (c)(2) which were promulgated in 1984. This amendment corrects this omission.

g. 40 CFR 262.34(c)(2): EPA is amending 40 CFR 262.34 by revising 40 CFR 262.34(c)(2) to read: "A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter.

During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating."

This amendment makes the conforming change discussed above (section V.3.f.) for 40 CFR 262.34(c)(1).

h. 40 CFR 262.42(a)(1), (a)(2), and (c)—Exception Reporting: In 40 CFR part 262, EPA is amending both 40 CFR 262.42(a)(1) and (a)(2) to read, "A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month * * *". Also, EPA is adding paragraph (c) to this section to require a generator to comply with this provision when a designated facility re-ships a generator's hazardous waste shipment of rejected loads or container residues to an alternate facility for further hazardous waste management. This correction is discussed in Section V.C.10 below, along with other corrections and clarifications to the hazardous waste manifest regulations.

Specifically, the current language in paragraphs (a)(1) and (a)(2) at 40 CFR 262.42 incorrectly describes the exception reporting requirements as applying only to generators of "greater than 1000 kilograms of hazardous waste" in a calendar month, when it should properly address such requirements for large quantity generators (*i.e.*, those generators generating 1,000 kilograms or greater of hazardous waste or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month). These amendments are further supported by the language in paragraphs

§ 262.34(d), § 262.34(g), § 262.34(h) and § 262.34(j) cited under 40 CFR 261.5(e).

i. 40 CFR 262.60(b)—Imports of Hazardous Waste: In 40 CFR part 262, EPA is amending 40 CFR 262.60(b) to replace "§ 262.20 (a)" with "§ 262.20." Specifically, paragraph 262.60(b) incorrectly states that "when importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that * * *". However § 262.20(a) is only one component of the hazardous waste manifest requirements that facilities must meet in either transporting or importing hazardous wastes. To comply with this requirement only, and no other, would be a violation of the hazardous waste manifest requirements. EPA made this error in the original import regulations (see 51 FR 28685, August 8, 1986) and is now amending this section to reflect the Agency's intent.

4. Corrections to 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)

In 40 CFR part 264, EPA is amending the following sections in order to include correct citations, clarify regulatory requirements that are either cited elsewhere in **Federal Register** notices or documents published in RCRA Online, and incorporate conforming changes: Sections 264.52, 264.56, 264.72,⁶ 264.314, 264.316, and 264.552.

a. 40 CFR 264.52—Content of contingency plan: EPA is amending § 264.52(b) by removing the phrase "or part 1510 of chapter V," since part 1510 of chapter V no longer exists.

b. 40 CFR 264.56—Emergency Procedures: Consistent with the change being made in 40 CFR 264.52, EPA is amending § 264.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)," since this provision no longer exists.

c. 40 CFR 264.314(d) and 264.316(b): The Burden Reduction Rule (71 FR 16906, April 4, 2006) deleted the obsolete paragraph (a) in § 264.314 and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (f) were re-designated paragraphs (a) through (e). In doing this, the Burden Reduction Rule failed to update the cross-references in paragraph 264.314(d) from "(e)(1)" to "(d)(1)" and "(e)(2)" to "(d)(2)," and failed to update the cross-reference in § 264.316(b) from "§ 264.314(e)" to "§ 264.314(d)". Today's rule corrects these errors.

⁶ Discussed under Section V.C.10.

d. 40 CFR 264.552(a)(3): As discussed under 40 CFR 264.314 (section V.4.c), the Burden Reduction Rule (71 FR 16906, April 4, 2006) deleted the obsolete paragraph 264.314(a) and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (f) were re-designated paragraphs (a) through (e). In doing this, the Burden Reduction Rule failed to update the cross-references in § 264.552 to these re-designated paragraphs. Today's rule corrects this as follows: Paragraph 264.552(a)(3)(ii) revises the citation "§ 264.314(d)" to read "§ 264.314(c)"; paragraph 264.552(a)(3)(iii) revises the citation "§ 264.314(f)" to read "§ 264.314(e)"; and paragraph 264.552(a)(3)(iv) revises the citation "§ 264.314(c)" to read "§ 264.314(b)" and "§ 264.314(e)" to read "§ 264.314(d)."

e. 40 CFR 264.552(e)(4)(iv)(F): Today's rule revises the citation in § 264.552(e)(4)(iv)(F) from "260.11(a)(11)" to read "260.11(c)(3)(v)." The Corrective Action Management Units (CAMUs) final rule (67 FR 3025, January 22, 2002), in § 264.552(e)(4)(iv)(F), provided for a variance from the "Toxicity Characteristic Leaching Procedure" (TCLP), SW846 Method 1311, and incorrectly cited "40 CFR 260.11(11)" for Method 1311. This reference was an improper citation format. It should have read "40 CFR 260.11(a)(11)." EPA then significantly reorganized and revised 40 CFR 260.11 (70 FR 34538, June 14, 2005), without making the corresponding revision to the citation in § 264.552(e)(4)(iv)(F). However, the June 14, 2005 revision (at 70 FR 34560) also added a new § 260.11(c)(3)(v) referencing Method 1311. The EPA CFR Corrections rule (71 FR 40273, July 14, 2006) corrected the original § 264.552(e)(4)(iv)(F) citation to read "40 CFR 260.11(a)(11)," the paragraph that in 2002 correctly referred to SW846, which includes Method 1311. But, because of the June 14, 2005 revisions, the correct citation in the July 14, 2006 CFR corrections rule should have been "§ 260.11(c)(3)(v)."

5. Corrections to 40 CFR Part 265 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)

In 40 CFR part 265, EPA is amending the following sections in order to include correct citations, clarify particular regulatory requirements that are either cited elsewhere in **Federal Register** notices or documents published in RCRA Online, and incorporate conforming changes:

Sections 265.52, 265.56, 265.72,⁷ 265.314 and 265.316.

a. 40 CFR 265.52—Content of contingency plan: EPA is amending § 265.52(b) by removing the phrase “or part 1510 of chapter V,” since part 1510 of chapter V no longer exists.

b. 40 CFR 265.56—Emergency Procedures: Consistent with the change being made in 40 CFR 265.52, EPA is amending § 265.56(d)(2) by removing the parenthetical phrase “(in the applicable regional contingency plan under part 1510 of this title),” since the provision no longer exists.

c. 40 CFR 265.314(e) and 265.316(b): As discussed under the sections on 40 CFR 264.314 and 264.316 above (section V.4.c), today’s rule corrects some errors made in the Burden Reduction Rule (71 FR 16912, April 4, 2006) in 40 CFR 264.314(e) and 264.316(b). We are also making the same corrections to the corresponding part 265 provisions, which are identical in language to the part 264 provisions. Specifically, the 2006 Burden Reduction Rule deleted obsolete paragraph (a) in § 265.314 and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (g) became re-designated as paragraphs (a) through (f). In doing this, the Burden Reduction Rule failed to update the cross-references in paragraph 265.314(e) from “(f)(1)” to “(e)(1)” and “(f)(2)” to “(e)(2),” and failed to update the cross-reference in § 265.316(b) from “§ 265.314(f)” to “§ 265.314(e).” Today’s rule corrects these errors.

6. Corrections to 40 CFR Part 266 (Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities)

In 40 CFR part 266, EPA is amending the following section in order to make a necessary conforming change: Section 266.20.

40 CFR 266.20—Subpart C—Recyclable Materials Used in a Manner Constituting Disposal: EPA is amending § 266.20(b) by adding at the end of this paragraph the phrase, “and the recycler complies with § 268.7(b)(6).”

Specifically, when EPA promulgated § 268.7(b)(6), the Agency failed to make the conforming change at § 266.20(b) to clarify that the recycler must comply with the one-time certification requirement described at § 268.7(b)(4) for the initial shipment of the waste, and a one-time notification under paragraph § 268.7(b)(3). This correction addresses this oversight.

7. Conforming Changes To Include Reference to Part 267 in Different Sections of Parts 261, 262, 263, and 266.

In 2005, EPA promulgated 40 CFR part 267, which provides alternative management standards for owners and operators of certain types of hazardous waste treatment and storage facilities operating under a special type of permit—that is, the standardized permit. Management includes storing or non-thermally treating hazardous waste on-site in tanks, containers or containment buildings, or receiving hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then storing or non-thermally treating the hazardous waste in containers, tanks, or containment buildings. (See 40 CFR 270.255.) When EPA promulgated this rule, the Agency inadvertently failed to make a number of conforming changes to other parts of the RCRA hazardous waste regulations that were affected by this new rule. In particular, there are various paragraphs throughout parts 261, 262, 263 and 266 where the phrase, “parts 262 through 266, 268, and parts 270 and 124,” or variations appear. When part 267 was promulgated, this phrase should have been amended in the applicable paragraphs to add part 267 and reflect this change. The following paragraphs are amended to correct this oversight:

- § 261.5(b), (e) and (f)(2), and (g)(2)
- § 261.6(a)(3), (c)(1) and (d)
- § 261.7(a)(2)
- § 261.30(c)
- § 262.10(f), (j)(1) and (k).
- § 262.11(d)
- § 262.34(b), (f), and (i)
- § 262.41(b)
- § 263.12
- § 266.22, 266.70(d), 266.80(b), 266.101(c)(1) and (c)(2)

8. Corrections to Part 268 (Land Disposal Restrictions)

EPA is amending the following sections of 40 CFR part 268 in order to make a number of changes: Sections 268.40 and 268.48.

b. 40 CFR 268.40: In 40 CFR 268.40, EPA is amending the table, Treatment Standards for Hazardous Wastes, by revising the wastewater concentration associated with the regulated hazardous constituent, vinyl chloride, for F025 to read “0.27,” and by revising the wastewater concentration associated with the regulated hazardous constituent, arsenic, for K031 to read “1.4.” With respect to F025, 63 FR 28657–58 identified the wastewater concentration for vinyl chloride to be 0.27 mg/L. With respect to K031, the

preamble to the Universal Treatment Standards at 59 FR 48000, and confirmed at 59 FR 48070 for the table, Treatment Standards for Hazardous Wastes found in 40 CFR 268.40, the correct concentration for the regulated hazardous constituent, arsenic, is 1.4 mg/L for K031. Whether through a printing error, or inadvertent technical error, the concentrations for vinyl chloride and arsenic under F025 and K031 were changed in subsequent CFR publications to “0.027” and “14,” respectively. These changes correct those inadvertent errors.

In 40 CFR 268.40, EPA is also amending the table, Treatment Standards for Hazardous Wastes, for the waste codes K156, K157 and K158 by reinserting the parenthetical sentence, “(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)” As a result of the November 1, 1996, ruling of the United States Court of Appeals for the District of Columbia Circuit in *Dithiocarbamate Task Force v. EPA*, EPA added to the 40 CFR 268.40 table “Treatment Standards for Hazardous Wastes,” at the end of the “Waste description * * *” column for the entries for K156, K157, and K158, the parenthetical sentence “(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate).” (See 62 FR 32979, June 17, 1997.) This same parenthetical sentence was also added by the June 17, 1997 **Federal Register** notice under the entries for K156, K157, and K158 in the following two tables: 40 CFR 261.32 Listed hazardous wastes from specific sources and 40 CFR Table 302.4 List of Hazardous Substances and Reportable Quantities (62 FR 32977 and 32980, respectively). This parenthetical sentence still exists in these latter two tables, but was inadvertently deleted from the § 268.40 table under all three entries (K156–158) by 63 FR 28706–8, May 26, 1998. The purpose of this section of the **Federal Register**, as discussed in the preamble at 63 FR 28623, was to modify the entry in the § 268.40 table for U108; there was no mention of any revisions to the entries for K156–158. Yet when this table was recreated to reflect the U108 revision, the parenthetical sentence at the end of K156–158 was inadvertently deleted.

b. 40 CFR 268.48: At 59 FR 48103, September 19, 1994, EPA added § 268.48 and a table containing Universal Treatment Standards, including treatment standard entries in the table for “bis(2-Ethylhexyl)phthalate” and for “Hexachloropropylene.” The entries for these two chemicals appear in the 1995–

⁷ Discussed under Section V.C.10.

1998 Code of Federal Regulations. They also appear in this same table in the 1998 Phase IV Land Disposal Restrictions (LDR) Final Rule (63 FR 28744, May 26, 1998). By mistake, these entries do not appear in the same table in the 1999 Code of Federal Regulations, or in any CFR since then. There are no FR notices removing these entries. EPA is today restoring these two entries as they first appeared in 1994, and continued unchanged through 1998.

9. Corrections to Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program)

EPA is amending the following section of 40 CFR part 270 in order to make a necessary change: Section 270.4.

40 CFR 270.4(a): Today's rule restores the following sentence at the end of § 270.4(a): "However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42." (except that today's rule deletes the introductory word "However,"). The first part of this sentence was promulgated on April 1, 1983 (48 FR 14232). EPA attempted to add the last phrase of this sentence on September 28, 1988 (53 FR 37935), but was not able to because EPA had inadvertently deleted the first part of this sentence December 1, 1987 (52 FR 45799). In order to reinstate the missing sentence, EPA is today re-designating the introductory text of paragraph (a) as (a)(1); re-designating paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) as paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii) and (a)(1)(iv), respectively; and reinstating the missing sentence in a new paragraph (a)(2).

10. Corrections To Manifest Regulations

Today's rule corrects certain omissions and an error in the final manifest rule that was published on March 4, 2005 (See 70 FR 10776).

The March 2005 manifest rule (manifest rule) inadvertently omitted certain requirements that were intended for inclusion, and that relate to the use of a manifest in shipments of rejected hazardous wastes or non-empty containers containing regulated residues ("container residues"). In addition, the manifest rule contained an error regarding a designated facility's preparation of a new manifest in certain returned shipment situations. Today's rule corrects these omissions and this error as follows:

1. The generator must confirm receipt of a returned shipment of rejected hazardous wastes or container residues

by sending a copy of the final hazardous waste manifest that accompanied the shipment, whether it was a new manifest or the generator's original manifest, to the designated facility. Today's rule adds a new paragraph (f) to 40 CFR 262.23 to reflect this requirement.

The preamble to the May 22, 2001 proposed manifest rule (66 FR 28240) explained the importance of ensuring that a shipment returned to the generator be verified by the designated facility. Hence, it would be necessary for the generator to send to the designated facility a copy of the final manifest. However, the March 2005 final rule regulatory text inadvertently omitted this requirement for the generator to send a final copy of the manifest to the designated facility, even though the proposed rule preamble discussion clearly intended this requirement. Today's rule corrects this inadvertent omission.

2. The generator must sign and date the manifest accompanying the returned shipment of rejected hazardous wastes or container residues, provide the transporter with a copy of the manifest, and retain a copy of the manifest for three years. New paragraph (f) to 40 CFR 262.23, described previously in item 1, reflects these requirements as well.

In the appendix to part 262, the instructions for completing the manifest require the generator to sign and date the manifest for returned shipments involving the original manifest (generator must sign and date Item 18c of the original manifest) or a new manifest (generator must sign and date Item 20 of the new manifest). Moreover, EPA intended to include all of these same requirements (which generators must currently meet under the manifest instructions) to the regulatory text of the final manifest rule for returned shipments for the purpose of completion, but inadvertently omitted these requirements. Today's rule corrects these inadvertent omissions.

3. The generator must comply with the Exception reporting requirements of 40 CFR 262.42(a) or (b) when a designated facility forwards its hazardous waste or container residues to an alternate facility under a new manifest. Today's rule adds a new paragraph (c) to 40 CFR 262.42 to reflect this requirement.

The current exception reporting requirements in 40 CFR § 262.42 require a generator to file an exception report when a copy of that signed original manifest is not received from the designated facility within the specified time frame. EPA also intended to include, but inadvertently omitted in

the 2005 final manifest rule, exception reporting for hazardous waste shipments forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of CFR 264.72(e)(1)–(6)). Specifically, EPA intended to require the generator to comply with the exception reporting requirements of 40 CFR 262.42 (a) or (b) when a designated facility forwards rejected wastes or container residues to an alternate facility using a new manifest. Today's rule corrects this inadvertent omission.

4. The designated facility must mail to the generator a signed copy of the new manifest included with the shipments of rejected loads or container residues that are re-shipped to an alternate facility by the designated facility under a new manifest. Today's rule amends paragraph (e)(6) of 40 CFR 264.72 and 40 CFR 265.72 to reflect this requirement.

When a designated facility forwards to an alternate facility shipments of rejected loads or container residues under a new manifest, it is important for the designated facility also to send the generator a copy of the new manifest indicating the date on which the shipment was accepted by the initial transporter that is transporting the rejected hazardous waste or container residues to the alternate facility. Otherwise, the generator cannot reasonably determine that the alternate facility received the shipment in the appropriate time frame in order to fulfill its various obligations under the manifest regulations. EPA intended to include, but inadvertently omitted, this requirement in the manifest rule. Today's rule corrects this inadvertent omission.

5. The designated facility must enter its own information (instead of the generator's information) in Item 5 of the new manifest form when it originates the shipments of rejected hazardous waste or container residues. Today's rule amends 40 CFR 264.72(f)(1) and 265.72(f)(1) to correct this error.

This approach provides the most straightforward facility-to-generator tracking of waste shipments and was explained in the preamble to the May 22, 2001, proposed rule (66 FR 28240). In response to requests for clarification of this issue from the regulated community and State waste management officials, EPA's Office of Solid Waste (OSW) issued a memorandum (May 14, 2007) from Matt Hale, OSW Office Director, to the Regional Waste Division Directors and RCRA Enforcement Managers acknowledging this error and recommending that manifests should be

considered compliant if, in cases of rejected wastes and container residues, designated facilities entered their own information in Item 5 of the new manifest. In addition, the memo indicated that EPA would correct this error in the future. A copy of this memo is in the Docket for this rulemaking.

6. The designated facility using a new manifest to return a full load or partial load of rejected hazardous wastes, or container residues, to the generator must comply with the exception

reporting provisions of 40 CFR 262.42(a). Today's rule adds new paragraph (f)(8) to 40 CFR 264.72 and 265.72 to reflect this requirement. Today's rule also makes a necessary conforming amendment to paragraph (f)(7) to 40 CFR 264.72 and 40 CFR 265.72 to reference new paragraph (f)(8).

Under today's rule, the designated facility must file an exception report in situations when a completed copy of the manifest is not received from the generator within 35 days of the date that

the shipment was accepted by the initial transporter transporting the shipment. This requirement ensures that the shipment returned to the generator can be verified by the designated facility, as explained in the preamble to the May 22, 2001 proposed manifest rule. EPA intended to include, but inadvertently omitted, this requirement in the initial manifest rule of March 4, 2005. Today's rule corrects this inadvertent omission.

Table 1 provides a summary of the manifest technical corrections.

TABLE 1—MANIFEST RELATED OMISSIONS AND INACCURACIES CORRECTED IN TODAY'S DIRECT FINAL RULE

Citation	Action in today's final rule	Summary of added or corrected provision	Type of shipment affected (RW&CR = rejected waste and container residues)
262.23(f)	Add new paragraph (f)	Generator (recipient of shipment) must: —sign/complete the manifest. —provide a copy of the completed manifest to transporter. —send a copy of the completed manifest to the Designated Facility (originator of shipment). —keep a copy of completed manifest.	RW&CR returned from Designated Facility to Generator using a new or an original manifest.
262.42(c)	Add new paragraph (c).	Generator must file an exception report if a copy of the signed new manifest is not received from the alternate facility within a specified time frame.	RW&CR forwarded from Designated Facility to Alternate Facility using a new manifest.
264.72(e)(6) and 265.72 (e)(6).	Add new provision to existing paragraph (6).	Designated Facility must send copy of new manifest to the Generator.	RW&CR forwarded from Designated Facility to Alternate Facility using a new manifest.
264.72(f)(1) and 265.72 (f)(1).	Correct paragraph (1)	Designated Facility must enter its own information in Box 5 of the manifest.	RW&CR returned from Designated Facility to Generator using a new manifest.
264.72(f)(7) and 265.72 (f)(7).	Correct references in paragraph (7).	Designated Facility using original manifest need not comply with new paragraph (8).	RW&CR returned from Designated Facility to Generator using the original manifest.
264.72(f)(8) and 265.72 (f)(8).	Add new paragraph (8).	Designated Facility must comply with the exception reporting requirements for shipments returned to the Generator.	RW&CR returned from Designated Facility to Generator using a new manifest.

VI. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer its own hazardous waste program within the State in lieu of the Federal program. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering 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, since only the State was authorized to issue RCRA permits.

When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their program only when EPA enacts Federal requirements that are

more stringent or broader in scope than the existing Federal requirements.

RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Today's Direct Final rule finalizes technical corrections to a number of the regulations in 40 CFR parts 260–266, 268 and 270 that are being promulgated in part under the authority of HSWA, and in part under non-HSWA authority. Thus, the technical corrections and clarifications finalized today under non-HSWA authority would be applicable on the effective date only in those States that do not have final authorization of their base RCRA programs. The technical corrections to regulations in part 268 are promulgated under the authority of HSWA and would be

effective on the effective date of this Direct Final rule in all States unless the State is not authorized for the underlying provisions. Moreover, authorized States are required to modify their programs only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their program. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's Direct Final rule is considered to be neither more nor less stringent than the current standards. Therefore, authorized States would not be required to modify their programs to adopt the technical corrections promulgated today, although we would strongly urge the States to adopt these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

One exception to the above discussion concerns clarifications of the manifest regulations in 40 CFR 262.23. All authorized States will be required to adopt these revisions in accordance with the consistency requirements in 40 CFR 271.4(c). See 70 FR 10811, March 4, 2005 for a further discussion of this provision.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." Accordingly, EPA did not submit this action to the Office of Management and Budget (OMB) for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. As described in the preamble, while the recordkeeping and reporting requirements related to the manifest are not considered new requirements, we nevertheless discuss the information collection burden under the provisions of the *Paperwork Reduction Act* with respect to this action.

The manifest amendments in this action impose recordkeeping and

reporting burden on generators and designated facilities subject to these manifest changes. However, EPA believes that the burden impacts are minimal since the changes apply only to rejected load shipments and container residue shipments that require the completion of a new hazardous waste manifest. EPA estimates that each manifest completed and sent off site by a generator (2,074,900) will be delivered to the designated treatment, storage or disposal facility (TSDF), minus those manifests accompanying export shipments (19,509 manifests) or lost during transport (173 manifests). Hence, USEPA estimates that 2,055,218 manifests will be delivered to the designated TSDF. EPA estimates that 3% of these shipments will be classified as rejected loads or container residue shipments, and that 50% of these shipments would be affected by the manifest regulatory amendments in this action. Approximately 99% of these shipments (30,519) will be sent to an alternate facility, and the remaining 1% (308) of these shipments will be returned to the generator. Most of the incremental burden increase will result from the proposed changes applicable to the estimated 30,519 hazardous waste shipments forwarded to an alternate facility. However, EPA expects that the total national hourly burden will be minimal (4,578) hours, since for each affected shipment the respondent activity associated with the changes should require, at most, nine minutes of clerical staff time.

EPA believes that the potential recordkeeping and reporting burden associated with hazardous waste shipments returned to the generator will be negligible since the proposed changes will only affect 308 shipments annually, and only an extremely small fraction of those returned shipments will require the completion, submission, and recordkeeping of an exception report.

As a result of a small increase in the number of burden hours, EPA has submitted a nonsubstantive change request to the Office of Management and Budget (OMB) that will modify the information collection request (ICR) entitled, "Requirements for Generators, Transporters, and Waste Management Facilities under the RCRA Hazardous Waste Manifest System" (EPA ICR #0801.16; OMB Control No. 2050-0039) to account for this overall change in manifest burden hours. Burden is defined at 5 CFR 1320.3(b).

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 EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's Direct Final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action simply corrects typographical errors, incorrect citations, omissions provides clarifications, and makes conforming changes where they have not been made previously.

Although this Direct Final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and

tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This Direct Final rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because this rule corrects errors in the CFR and clarifies existing regulatory language.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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, as specified in Executive Order 13132. This action corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This action does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law because this rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because it is not based on environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this Direct Final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because this rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. These types of changes to the rule do not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*, as amended) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined

by 5 U.S.C. 804(2). This action is effective June 16, 2010.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

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

40 CFR Part 262

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

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, 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, 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, Water supply.

40 CFR Part 266

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

40 CFR Part 268

Environmental protection, Hazardous waste, 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, Water supply.

Dated: March 10, 2010.

Lisa P. Jackson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. 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, and 6974.

§ 260.10 [Amended]

■ 2. Amend § 260.10, the definition of “New hazardous waste management facility or new facility” by removing the date “October 21, 1976” and adding in its place the date “November 19, 1980”.

Appendix I [Removed]

■ 3. Amend part 260 by removing Appendix I.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 4. 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.

§ 261.1 [Amended]

■ 5. Amend § 261.1(c)(10) by removing the citation “§ 261.4(a)(13)” and adding in its place the citation “§ 261.4(a)(14)”.

■ 6. Amend § 261.2(c), Table 1, by removing the entry for “Scrap metal other than excluded scrap metal (see 261.1(c)(9))” and adding in its place the entry “Scrap metal that is not excluded under § 261.4(a)(13)” to read as follows:

§ 261.2 Definition of Solid Waste

* * * * *

(c) * * *

TABLE 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in §§ 261.2(a)(2)(ii), 261.4(a)(17), 261.4(a)(23), 261.4(a)(24), or 261.4(a)(25)	Speculative accumulation (§ 261.2(c)(4))
	1	2	3	4
* * * * *				
Scrap metal that is not excluded under § 261.4(a)(13)	(*)	(*)	(*)	(*)
* * * * *				

§ 261.4 [Amended]

■ 7. Amend § 261.4, paragraph (a)(17)(vi) by removing the citation “(a)(7)” and adding in its place the citation “(b)(7)”.

■ 8. Amend § 261.5 as follows:

- a. By revising paragraph (b).
- b. By revising paragraph (e).

- c. By revising paragraph (f) introductory text.
- d. By revising paragraph (f)(2).
- e. By revising paragraph (g) introductory text.
- f. By revising paragraph (g)(2).

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA, provided the generator complies with

the requirements of paragraphs (f), (g), and (j) of this section.

* * * * *

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA:

(1) A total of one kilogram of acute hazardous wastes listed in §§ 261.31 or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, or 261.33(e).

Note to paragraph (e): "Full regulation" means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.

* * * * *

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(a) of this chapter, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

* * * * *

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to

regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;

* * * * *

■ 9. Amend § 261.6 as follows:

■ a. By revising paragraph (a)(2) introductory text.

■ b. By revising paragraph (a)(2)(ii).

■ c. By revising paragraph (a)(3) introductory text.

■ d. By revising paragraph (c)(1).

■ e. By revising paragraph (d).

The revisions read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 268, 270, and 124 of this chapter.

* * * * *

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of part 264 or 265 of this chapter (40 CFR part 266, subpart H);

* * * * *

(3) The following recyclable materials are not subject to regulation under parts 262 through parts 268, 270 or 124 of this chapter, and are not subject to the notification requirements of section 3010 of RCRA:

* * * * *

(c) (1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 267, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

* * * * *

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the

requirements of subparts AA and BB of part 264, 265 or 267 of this chapter.

■ 10. Amend § 261.7 as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraph (b)(1) introductory text.

■ c. By revising paragraph (b)(3) introductory text.

The revisions read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either: an empty container; or an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under parts 261 through 268, 270, or 124 of this chapter or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under parts 261 through 268, 270 and 124 of this chapter and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§ 261.31 or 261.33(e) of this chapter is empty if:

* * * * *

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31 or 261.33(e) is empty if:

* * * * *

■ 11. Amend § 261.23 by revising paragraph (a)(8) to read as follows:

§ 261.23 Characteristic of reactivity.

(a) * * *

(8) It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

* * * * *

■ 12. Amend § 261.30 by revising paragraphs (c) and (d) to read as follows:

§ 261.30 General.

* * * * *

(c) Each hazardous waste listed in this subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 of the Act and certain recordkeeping and reporting requirements under parts 262 through 265, 267, 268, and 270 of this chapter.

(d) The following hazardous wastes listed in § 261.31 are subject to the

exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

■ 13. In § 261.31(a), the table is amended by revising the entry for F037 to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F037	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of.	(T)

* * * * *

■ 14. In § 261.32(a), the table is amended as follows:

■ a. Under the heading “organic chemicals”, revise the entry for “K107”.

■ b. Remove the heading “Primary copper:”.

■ c. Remove the heading “Primary lead:”.

■ d. Remove the heading “Primary zinc:”.

■ e. Remove the heading “Ferroalloys:”.

The revision reads as follows:

§ 261.32 Hazardous wastes from specific sources

* * * * *

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
	Organic chemicals	
K107	Column bottoms from product separation from the production of 1,1 dimethylhydrazine (UDMH) from carboxylic hydrazides.	(C,T)

* * * * *

■ 15. In § 261.33(f), the table is amended by revising the entry for U239 to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(f) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
U239	1330-20-7	Benzene, dimethyl-

* * * * *

Appendix VII [Amended]

■ 16. Section 261, Appendix VII is amended by removing in its entirety the entries for EPA Hazardous Waste Nos. “K064,” “K065,” “K066,” “K090,” and “K091”.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

■ 18. Amend § 262.10 as follows:

■ a. By revising paragraph (f).

■ b. By revising paragraph (j)(1) introductory text (table remains unchanged).

■ c. By revising paragraph (k).

§ 262.10 Purpose, scope and applicability.

* * * * *

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.70 is not required to comply with other standards in this part or 40 CFR parts 270, 264, 265, 267, or 268 with respect to such pesticides.

* * * * *

(j)(1) Universities that are participating in the Laboratory XL project are the University of Massachusetts Boston in Boston, Massachusetts, Boston College in Chestnut Hill, Massachusetts, and the University of Vermont in Burlington, Vermont ("Universities"). The Universities generate laboratory wastes (as defined in § 262.102), some of which will be hazardous wastes. As long as the Universities comply with all the requirements of subpart J of this part the Universities' laboratories that are participating in the University Laboratories XL Project as identified in Table 1 of this section, are not subject to the provisions of §§ 262.11, 262.34(c), 40 CFR parts 264 and 265, 267, and the permit requirements of 40 CFR part 270 with respect to said laboratory wastes.

* * * * *

(k) Generators in the Commonwealth of Massachusetts may comply with the State regulations regarding Class A recyclable materials in 310 C.M.R. 30.200, when authorized by the EPA under 40 CFR part 271, with respect to those recyclable materials and matters covered by the authorization, instead of complying with the hazardous waste accumulation requirements of § 262.34, the reporting requirements of § 262.41, the storage facility operator requirements of 40 CFR parts 264, 265 and 267, and the permitting requirements of 40 CFR part 270. Such generators must also comply with any other applicable requirements, including any applicable authorized State regulations governing hazardous wastes not being recycled and any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to the Hazardous and Solid Waste Amendments of 1984.

* * * * *

■ 19. Amend § 262.11 by revising paragraph (d) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

■ 20. Amend § 262.23 by adding paragraph (f) to read as follows:

§ 262.23 Use of the manifest.

* * * * *

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility (following the procedures of 40 CFR 264.72(f) or 265.72(f)), the generator must:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

■ 21. Amend § 262.34 as follows:

■ a. By revising paragraph (a) introductory text.

■ b. By removing the undesignated sentence after paragraph (a)(1)(iv)(B).

■ c. By revising paragraph (a)(2).

■ d. By revising paragraph (a)(4).

■ e. By adding paragraph (a)(5)

■ f. By revising paragraph (b).

■ g. By revising paragraph (c)(1) introductory text.

■ h. By revising paragraph (c)(2).

■ i. By revising paragraph (d)(4).

■ j. By revising paragraph (f).

■ k. By revising paragraph (i).

The revisions and addition read as follows:

§ 262.34 Accumulation time.

(a) A generator who generates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

* * * * *

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank;

* * * * *

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with all applicable requirements under 40 CFR part 268.

(5) Generators accumulating hazardous waste on-site for 90 days or less without a permit or without having interim status are exempt from all the requirements in subparts G and H of 40 CFR part 265, except for 40 CFR 265.111 and 265.114.

(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he:

* * * * *

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

* * * * *

(d) * * *

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subpart C of part 265, with all applicable requirements under 40 CFR part 268; and

* * * * *

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267, and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267, and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

■ 22. Amend § 262.41 by revising paragraph (b) to read as follows:

§ 262.41 Biennial report.

* * * * *

(b) Any generator who treats, stores, or disposes of hazardous waste on-site must submit a biennial report covering those wastes in accordance with the provisions of 40 CFR parts 270, 264, 265, 266, and 267. Reporting for exports

of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

* * * * *

■ 23. Amend § 262.42 as follows:

■ a. By revising paragraph (a)(1).

■ b. By revising paragraph (a)(2) introductory text.

■ c. By adding paragraph (c).

The revisions and addition read as follows:

§ 262.42 Exception reporting.

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

* * * * *

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

§ 262.60 [Amended]

■ 24. Amend § 262.60(b) introductory text by removing the citation “§ 262.20(a)” and adding in its place “§ 262.20”.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

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

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

■ 26. Revise § 263.12 to read as follows:

§ 263.12 Transfer facility requirements.

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

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

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

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

§ 264.52 [Amended]

■ 28. Amend § 264.52(b) in the first sentence by removing the words “, or part 1510 of chapter V”.

§ 264.56 [Amended]

■ 29. Amend paragraph § 264.56(d)(2) introductory text by removing the parenthetical phrase “(in the applicable regional contingency plan under part 1510 of this title)”.

■ 30. Amend § 264.72 as follows:

■ a. By revising paragraph (e)(6).

■ b. By revising paragraph (f)(1).

■ c. By revising paragraph (f)(7).

■ d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 264.72 Manifest discrepancies.

* * * * *

(e) * * *

(6) Sign the Generator's/Officer's Certification to certify, as the offeror of the shipment, that the waste has been

properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * *

§ 264.314 [Amended]

■ 31. In § 264.314, amend paragraph (d) introductory text by revising "(e)(1)" to read "(d)(1)" and by revising "(e)(2)" to read "(d)(2)".

§ 264.316 [Amended]

■ 32. In § 264.316, amend paragraph (b) by removing the citation "§ 264.314(e)" and adding in its place "§ 264.314(d)".

§ 264.552 [Amended]

■ 33. Amend § 264.552 as follows:

- a. In paragraph (a)(3)(iii), remove the citation "§ 264.314(d)" and add in its place "§ 264.314(c)";
- b. In paragraph (a)(3)(iii), remove the citation "§ 264.314(f)" and add in its place "§ 264.314(e)";
- c. In paragraph (a)(3)(iv), remove the citation "§ 264.314(c)" and add in its place "§ 264.314(b)" and remove the citation "§ 264.314(e)" and add in its place "§ 264.314(d)"; and
- d. In paragraph (e)(4)(iv)(F), remove the citation "260.11(a)(11)" and add in its place "260.11(c)(3)(v)".

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

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

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

§ 265.52 [Amended]

■ 35. Amend paragraph § 265.52(b) in the first sentence by removing the words "or part 1510 of chapter V".

§ 265.56 [Amended]

■ 36. Amend § 265.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)".

■ 37. Amend § 265.72 as follows:

- a. By revising paragraph (e)(6).
- b. By revising paragraph (f)(1).
- c. By revising paragraph (f)(7).
- d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 265.72 Manifest discrepancies.

* * *

(e) * * *

(6) Sign the Generator's/Officer's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in

non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * *

§ 265.314 [Amended]

■ 38. In § 265.314, amend paragraph (e) introductory text by removing the citation "(f)(1)" and adding in its place "(e)(1)" and by removing the citation "(f)(2)" and adding in its place "(e)(2)".

§ 265.316 [Amended]

■ 39. In § 265.316, amend paragraph (b) by removing the citation "§ 265.314(f)" and adding in its place "§ 265.314(e)".

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 40. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

■ 41. Amend § 266.20 by revising paragraph (b) to read as follows:

§ 266.20 Applicability.

* * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in subpart D of part 268 (or applicable prohibition levels in § 268.32 of this chapter or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (*i.e.*, hazardous waste) that they contain, and the recycler complies with § 268.7(b)(6) of this chapter.

* * *

■ 42. Revise § 266.22 to read as follows:

§ 266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of subparts A through L of parts 264, 265 and 267, and parts 270 and 124 of this chapter and the notification requirement under section 3010 of RCRA.

■ 43. Amend § 266.70 by revising paragraph (d) to read as follows:

§ 266.70 Applicability and requirements.

(d) Recyclable materials that are regulated under this subpart that are accumulated speculatively (as defined in § 261.1(c) of this chapter) are subject to all applicable provisions of parts 262 through 265, 267, 270, and 124 of this chapter.

§ 266.80 [Amended]

■ 44. Amend § 266.80 by adding paragraphs (b)(1)(viii) and (b)(2)(viii) to read as follows:

§ 266.80 Applicability and requirements.

- (b) * * *
- (1) * * *
- (viii) All applicable provisions in part 267 of this chapter.
- (2) * * *
- (viii) All applicable provisions in part 267 of this chapter.
- 45. Amend § 266.101 by revising paragraph (c) to read as follows:

§ 266.101 Management prior to burning.

(c) *Storage and treatment facilities.* (1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, 267 and 270 of this chapter, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

(2) Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of § 266.108, hazardous waste that they generate are exempt from the regulations of parts 264, 265, 267 and 270 of this chapter applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks

that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (c)(1) of this section.

PART 268—LAND DISPOSAL RESTRICTIONS

■ 46. The authority citation for part 268 continues to read as follows:

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

■ 47. In § 268.40(j), the table "Treatment Standards for Hazardous Wastes," is amended as follows:

- a. By revising the entry for F025.
- b. By revising the entry for K031.
- c. By revising the entry for K156.
- d. By revising the entry for K157.
- e. By revising the entry for K158.

§ 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
F025 ...	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025—Light Ends Subcategory.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025—Spent Filters/Aids and Desiccants Subcategory.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
K031 ...	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440-38-2	1.4	5.0 mg/L TCLP.

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
K156 ...	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Acetonitrile	75-05-8	5.6	1.8
		Acetophenone	98-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081	1.5
K157 ...	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
K158 ...	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2

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.

* * * * *

■ 48. In § 268.48(a), the table "Universal Treatment Standards," is amended by adding the specific entries, "bis(2-Ethylhexyl)phthalate" and for "Hexachloropropylene" in alphabetical order:

§ 268.48 Universal Treatment Standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable]

Regulated constituent common name	CAS ¹ No.	Wastewater standard con- centration ² in mg/l	Nonwaste- water standard concentration ³ in mg/kg un- less noted as "mg/l TCLP"
Organic Constituents			
Ethyl ether	60-29-7	0.12	160
bis(2-Ethylhexyl)phthalate	117-81-7	0.28	28
Hexachloroethane	67-72-1	0.055	30
Hexachloropropylene	1888-71-7	0.035	30

Footnotes to Table UTS

1. 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.

2. Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

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

■ 49. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

■ 50. Amend § 270.4 as follows:

■ a. By redesignating paragraph (a)(1) as paragraph (a)(1)(i).

■ b. By redesignating paragraph (a)(2) as paragraph (a)(1)(ii).

■ c. By redesignating paragraph (a)(3) as paragraph (a)(1)(iii).

■ d. By redesignating paragraph (a)(4) as paragraph (a)(1)(iv).

■ e. By redesignating paragraph (a) as introductory text (a)(1).

■ f. By adding paragraph (a)(2) to read as follows:

§ 270.4 Effect of a permit.

(a) * * *

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42.

* * * * *

[FR Doc. 2010-5700 Filed 3-17-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT-OST-2008-0088]

RIN OST 2105-AD84

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Correction

In rule document 2010-3731 beginning on page 8528 in the issue of Thursday, February 25, 2010, make the following corrections:

§ 40.225 [Corrected]

1. On page 8529, in § 40.225, in the first column, amendatory instructions 2 and 3 are corrected to read as follows:

■ 2. Section 40.225 (a) is amended by removing the words "beginning February 1, 2002".

■ 3. Appendix G is revised to read as follows:

Appendix G to Part 40 [Corrected]

2. On page 8530 and 8531, in Appendix G to Part 40, the graphics are reprinted to read as follows:

Polymer	CAS No.
2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene, minimum number average molecular weight (in amu), 9400	25085-39-6

* * * * *

[FR Doc. 2010-13320 Filed 6-3-10; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 268, and 270

[EPA-RCRA-2008-0678; FRL-9158-5]

RIN 2050-AG52

Hazardous Waste Technical Corrections and Clarifications Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On March 18, 2010, EPA published in the *Federal Register* a Direct Final rule entitled, *Hazardous Waste Technical Corrections and Clarifications Rule* (75 FR 12989). This Direct Final rule included a number of specific technical changes to correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. At the same time, EPA also published a parallel Proposed Rule (75 FR 13006) for the same changes. EPA received adverse comment on four of the specific amendments and thus is withdrawing them. The four amendments being withdrawn are: 40 CFR 262.34(a); 40 CFR 262.34(a)(2); 40 CFR 262.34(a)(5), and 40 CFR 266.20(b). As a result of withdrawing the amendment at 40 CFR 262.34(a)(5), we also are withdrawing the related amendment at 40 CFR 262.34(a)(1)(iv)(B). Finally, because of a typographical error, we also are withdrawing the amendment to the entry "K107" in the table at 40 CFR 261.32(a).

DATES: On June 16, 2010, all amendments go into effect that were published in the *Federal Register* at 75 FR 12989 on March 18, 2010, except the following: The amendment to the entry "K107" in the table at 40 CFR 261.32(a); the amendment to 40 CFR 262.34(a); the amendment to 40 CFR 262.34(a)(1)(iv)(B); the amendment to 40 CFR 262.34(a)(2); the amendment to 40 CFR 262.34(a)(5), and the amendment at

40 CFR 266.20(b) which are withdrawn effective June 4, 2010.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery (MC:5304P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone: (703) 308-8827; or e-mail: oleary.jim@epa.gov.

SUPPLEMENTARY INFORMATION: On March 18, 2010, EPA published in the *Federal Register* a Direct Final rule entitled, *Hazardous Waste Technical Corrections and Clarifications Rule* (75 FR 12989). This Direct Final rule included a number of specific technical changes to correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. At the same time, EPA also published a parallel Proposed Rule (75 FR 13006) for the same changes.

We stated in that Direct Final rule that if we received adverse comment on any amendments by May 3, 2010, the affected amendments in the Direct Final rule would not take effect and we would publish a timely withdrawal in the *Federal Register* of those specific amendments. We subsequently received adverse comment on four specific amendments:

- 40 CFR 262.34(a) related to the hazardous waste accumulation time for large quantity generators;
- 40 CFR 262.34(a)(2) related to the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container and tank;
- 40 CFR 262.34(a)(5) related to the closure requirements for tanks, containers, drip pads and containment buildings
- 40 CFR 266.20(b) related to recyclable materials used in a manner constituting disposal.

Because EPA received adverse comment on these four amendments, we are withdrawing them.

As a result of withdrawing 40 CFR 262.34(a)(5), the related amendment at 40 CFR 262.34(a)(1)(iv)(B) must also be withdrawn because the Agency had deleted the latter part of this particular regulatory citation in the Direct Final rule in an effort to clarify the closure requirements for tanks, containers, drip pads and containment buildings. Also, there was a typographical error related to the entry for EPA hazardous waste No. K107 in the table at 40 CFR 261.32(a). We therefore are withdrawing this amendment as well. Thus, we are withdrawing six of the original amendments from the March 18, 2010 Direct Final rule.

EPA published a parallel Proposed Rule on the same day as the Direct Final rule (75 FR 13006). The Proposed Rule invited comment on the substance of the Direct Final rule. We intend to review the adverse comments we received with respect to the amendments at 40 CFR 262.34(a), 40 CFR 262.34(a)(1)(iv)(B), 40 CFR 262.34(a)(2), 40 CFR 262.34(a)(5), and 40 CFR 266.20(b) to determine the appropriate course of action for each amendment. With respect to the typographical error in the amendment to the entry for EPA hazardous waste No. K107 in the table at 40 CFR 261.32(a), we intend to publish a final rulemaking that will correct this mistake. As stated in the parallel proposal, we will not institute a second comment period on these proposed actions.

The amendments for which we did not receive adverse comment will become effective on June 16, 2010, as provided in the March 18, 2010, Direct Final rule.

Effective Dates

Because there may be some confusion about the effective dates for the amendments in the *Final Hazardous Waste Technical Corrections and Clarifications Rule* (75 FR 12989) which are not being withdrawn and which go into effect on June 16, 2010, EPA is here providing further explanation for the three types of amendments in the *Final Rule*. The three types of amendments result from the fact that the amendments are promulgated in part under the authority of the Hazardous and Solid Waste Amendments of 1984 (HSWA), and in part under non-HSWA RCRA authority. In addition, some amendments are jointly promulgated under the authority of the Hazardous Materials Transportation Act (HMTA).

First, the following amendments to the manifest regulations are promulgated under non-HSWA RCRA authority and the authority of the Hazardous Materials Transportation Act:

- 40 CFR 262.23,
- 40 CFR 262.41, and
- 40 CFR 262.42, and
- 40 CFR 262.60(b).

These non-HSWA manifest amendments will be implemented under RCRA authority on the effective date only in those states that do not have final authorization of their base RCRA programs. These changes will not therefore be implemented and enforced under RCRA authority in authorized states until the authorized states have revised their programs and received authorization for these program revisions. However, because these hazardous waste manifest requirements

are jointly promulgated by EPA under RCRA authority and the Department of Transportation (DOT) under the federal hazardous materials transportation laws, the manifest changes will be applicable federally in all states *under the authority of the Hazardous Materials Transportation Act (HMTA)* on the effective date. All states will be required to adopt these amendments in accordance with the consistency requirements in 40 CFR 271.4(c). (See 70 FR 10810–10811, March 4, 2005 for a further discussion of the effects of DOT hazardous materials law, RCRA consistency requirements, and state authorization on the implementation of the manifest.)

Second, the following amendments are promulgated under the authority of HSWA and, because they are not more stringent, they will be effective on June 16, 2010, in states that are not currently authorized for the section being amended:

- All amendments to regulations in 40 CFR Part 268,
- 40 CFR 264.552, and
- 40 CFR 266.101.

Third, all other amendments in the *Hazardous Waste Technical Corrections and Clarifications Rule* which are not withdrawn and go into effect on June 16, 2010, are promulgated under non-HSWA RCRA authority. These non-HSWA amendments will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs.

Authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent or reduce the scope of the federal program, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program. The *Hazardous Waste Technical Corrections and Clarifications Rule* is considered to be neither more nor less stringent than the current standards. Therefore, authorized states, while not required to modify their programs to adopt the second and third types of technical corrections discussed above are strongly urged to adopt these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

List of Subjects

40 CFR Part 260

Environmental protection,
Administrative practice and procedure,
Confidential business information,

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

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

40 CFR Part 262

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

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, 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, 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, Water supply.

40 CFR Part 266

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

40 CFR Part 268

Environmental protection, Hazardous waste, 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, Water supply.

Dated: May 27, 2010.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

Accordingly, EPA withdraws the amendment to the entry “K107” in the table 40 CFR 261.32(a), the amendment at 40 CFR 262.34(a), the amendment at 40 CFR 262.34(a)(1)(iv)(B), the amendment at 40 CFR 262.34(a)(2), the amendment at 40 CFR 262.34(a)(5), and the amendment at 40 CFR 266.20(b)

published in the *Federal Register* on March 18, 2010 (75 FR 12989).

[FR Doc. 2010–13376 Filed 6–3–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XW75

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod for American Fisheries Act Catcher Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary as the 2010 Pacific cod directed fishing allowance for AFA trawl catcher processors in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 Pacific cod total allowable catch (TAC) allocated to AFA trawl catcher processors in the BSAI is 3,467 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

MEETING MINUTES

June 3, 2010

I. CALL TO ORDER

Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman, called to order a special meeting of the DEP Advisory Council at 1:40 p.m. on June 3 2010 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Lisa Dooley, Jackie Hallinan, Larry Harris, Karen Price, Bill Raney, and Rick Roberts.

The meeting was also attended by the following DEP personnel: Randy C. Huffman, DEP Cabinet Secretary; Lisa McClung, DEP Deputy Cabinet Secretary; Kathy Cosco, DEP Chief Communication Officer; Daniel T. Arnold, Division of Water and Waste Management; Bill Timmermeyer, Division of Water and Waste Management; Charles Sturey, Division of Mining and Reclamation; Dave Vandeline, Division of Mining and Reclamation, Office of Explosives and Blasting; Yvonne Anderson, Division of Mining and Reclamation; Ken Holliday, Division of Water and Waste Management; Yogesh Patel, Division of Water and Waste Management; Fred Durham, Division of Air Quality; Jim Mason, Division of Air Quality; Lewis Halstead, Division of Mining and Reclamation.

Also in attendance were: Don Garvin of the Ohio Valley Environmental Coalition; Katherine Crockett and Emily Moy of Spilman Thomas & Battle; and Lewis Baker of the West Virginia Rural Water Association.

III. OLD BUSINESS

Minutes of the May 27, 2010 Meeting. The minutes were emailed and provided to Council in hard copy. Ms. Dooley moved for approval of the minutes, Mr. Raney seconded the motion, and it was carried by acclamation of Council.

IV. PROPOSED 2011 LEGISLATIVE RULES

Because the Advisory Council had received summaries of the rule two weeks prior to the meeting, he suggested that Ms. Boggs simply read the title of the rule and allow Council members to ask questions, rather than read the summaries to Council. The suggestion was well taken. Summaries of the proposed rules are set forth herein for completeness of the record, and so the minutes will reflect the complete information provided to Council.

Division of Air Quality

- ❖ 45 C.S.R. 8 – *Ambient Air Quality Standards*. Promulgated last in the 2010 Session. Revisions to the rule include a change in format to incorporation by reference, rather than reiterating the NAAQS in the rule. The rule now incorporates by reference the NAAQS promulgated by EPA under 40 C.F.R. § 50 and the ambient air monitoring reference methods and equivalent methods under 40 C.F.R. § 53, which become effective June 1, 2010. EPA has established a new primary one-hour NO₂ standard at a level of 100 parts per billion, based on the three-year average of the 98th percentile of the yearly distribution of one-hour daily maximum concentrations, to supplement the existing primary annual standard of 53 parts per million. This new NO₂ primary standard is incorporated by reference in this rule.

Section 2, titled *Anti-Degradation Policy*, has been stricken for two reasons. First, the new incorporation by reference format incorporates the federal significant deterioration of air quality provisions under 40 C.F.R. § 50.2(c). Second, because West Virginia adopted the federal Prevention of Significant Deterioration program under 45 C.S.R. 14 in the early 1980s, the State has more than satisfied the intent of the relic language in Section 2 to protect the air quality in areas that were in attainment of the NAAQS. Section 2 was authored in the early 1970s as a placeholder in anticipation of the future PSD program and its provisions for best available control technology.

- ❖ 45 C.S.R. 14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration*. Promulgated last in the 2010 Session. Revisions to the rule include deletion of federally stayed provisions for fugitive emissions and clarification of affected facilities at large coal prep plants. EPA is now reconsidering inclusion of fugitive emissions and will issue a final rule in the future. Fugitive emissions from stockpiles (now an affected source under 40 C.F.R. § 60, Subpart Y) are now counted for large coal prep plants (but haul roads are still excluded). Other minor revisions ensure consistency with federal counterpart language.
- ❖ 45 C.S.R. 16 – *Standards of Performance for New Stationary Sources*. Promulgated last in the 2010 Session. Revisions to this rule are the annual incorporate-by-reference amendments to the NSPS, including Standards of Performance for Coal Preparation and Processing Plants. These final amendments include revisions to the emission limits for particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment located at coal preparation and processing plants.
- ❖ 45 C.S.R. 18 – *Combustion of Solid Waste*. Promulgated last in the 2008 Session. Revisions to the rule include new federal emission guidelines for existing hospital/medical/infectious waste incinerators (HMIWI). The revised rule has been restructured to better comport to respective federal counterpart language. The stricken provisions in Section 12, *Compliance Dates*, have been moved to respective sections for existing HMIWI and commercial and industrial solid waste incinerators. The revisions

strike obsolete language regarding repealed provisions, as well as add new definitions to the rule. Other miscellaneous revisions are included that improve the clarity and accuracy of existing rule language.

- ❖ 45 C.S.R. 19 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment*. Promulgated last in the 2010 Session. Revisions to the rule include a new subsection 1.5, which provides that references to the federal counterpart will be construed as the version that was in effect as of June 1, 2010. Also, the term “affected facilities” has been clarified. Fugitive emissions from stockpiles (now an affected facility under 40 C.F.R. § 60, Subpart Y) are now counted for large coal prep plants (but haul roads are still excluded). Other minor revisions ensure consistency with federal counterpart language to date.
- ❖ 45 C.S.R. 25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities*. Promulgated last in the 2010 Session. Revisions to the rule include annual incorporation-by-reference updates. Definitions that are not used in the rule have been stricken and requirements pertaining to ignitable, reactive or incompatible wastes have been updated to reference a federal counterpart. The fee schedule for hazardous waste management facilities has been simplified.
- ❖ 45 C.S.R. 34 – *Emission Standards for Hazardous Air Pollutants*. Promulgated last in the 2010 Session. Revisions to this rule include the annual incorporation-by-reference revisions to the Hazardous Air Pollutant rule that include the following source categories of new or revised NESHAP standards promulgated as of June 1, 2010 for non-major area sources: Chemical Manufacturing Area Sources. The revised rule also incorporates by reference the following source categories of new or revised NESHAP standards promulgated as of June 1, 2010 for major sources: Petroleum Refineries and Reciprocating Internal Combustion Engines.
- ❖ The following source categories of newly promulgated NESHAPS affecting non-major area sources of hazardous air pollutants are being excluded from incorporation by reference: Prepared Feeds Manufacturing; Aluminum, Copper, and Other Non-Ferrous Foundries; Asphalt Processing and Asphalt Roofing Manufacturing, Paints and Allied Products Manufacturing; and Chemical Preparations Industry. EPA has not provided any additional funding to implement these new federal area source air toxics rules. Further, DAQ considers these standards to be resource-intensive and costly to implement as a practical matter, without achieving commensurate air quality benefits. For these reasons, West Virginia is one of Several States in Region III that are adopting some, but not all, of these standards. EPA Regional Offices will be implementing those standards not adopted by the States, thereby providing a measure of regulatory certainty and consistency.

Division of Water & Waste Management

- ❖ 33 C.S.R. 20 – *Hazardous Waste Management System*. Promulgated last in the 2010 Session. Revisions to this rule include striking “Expansion to RCRA Comparable Fuel Exclusion” from exclusion from incorporation by reference of the federal rule.

- ❖ 47 C.S.R. 12 – *Requirements Governing Groundwater Standards*. Promulgated last in the 2010 Session. The proposed revision to this rule is technical cleanup from last year’s revision. Last year’s amendment incorrectly set a numeric standard for radon, which the EPA proposed in draft language in 2009 but has not yet finalized. Therefore, West Virginia’s adoption of a radon standard for groundwater was premature.
- ❖ 47 C.S.R. 60 – *Monitoring Well Design Standards*. Promulgated last in the 2010 Session. Revisions to this rule are needed to correct requirements for documentation submittals to DEP. The current version requires reporting of all borehole abandonment, which is unenforceable and unnecessary. Revisions to this rule will require abandonment documentation for “high risk” boreholes and permanent monitoring wells, as was the original intention of the 2010 amendments recommended by the Monitoring Well Advisory Council.

Secretary’s Office

- ❖ 60 C.S.R. 2 – *Rules on Freedom of Information Act Requests*. Promulgated last in 1997. Revisions to this rule include changing the fee structure for searching for and reproducing requested records to bring it in line with other State agencies by setting a flat search fee of \$20.00 per hour (or a quarter fraction thereof) for a Division’s time spent in locating, duplicating or compiling the requested records providing and a cost of \$10.00 if the information is produced on diskette, tape or other storage media.

Division of Mining & Reclamation

- ❖ 38 C.S.R. 2 – *West Virginia Surface Mining Reclamation Rule*. Promulgated last in the 2009 Session. In addition to the amendments discussed at the December 9, 2009 meeting, which are currently in effect as an Emergency Rule, the proposed revisions include the following: (1) Clarification of the format and information necessary for complete application submittal and clarification on the renewal process to take into account DEP’s electronic filing processes; (2) Provision for advertisement of the application when it is technically complete, as opposed to administratively complete; (3) Provision for reopening of the public comment period; (4) Provision that pre-subsidence surveys shall be confidential and only used for evaluating damage relating to subsidence; (5) Clarification of when an operator is considered to be in compliance with applicable environmental performance standards; (6) Provision that the Secretary has the authority to initiate bond release in lieu of the permittee; (7) Clarification that bonding for a permit in inactive status shall remain in effect for the life of the operation; and (8) Provision that the Secretary shall provide email notice of the issuance of a show cause order to members of the public who have subscribed to the Secretary’s email notification service and otherwise provide notice to any person whose Citizen Complaint has resulted in the issuance of any violation that led to the issuance of a show cause order.

- ❖ 199 C.S.R. 1 – *Surface Mining Blasting Rule*. Promulgated last in the 2008 Session Revisions to this rule include modifying the definitions of “other structure” and “structure” to provide for dams as defined in 38 C.S.R. 4 § 2.7 and to provide that those dams will be exempt from the maximum air blast and ground vibration standards of the rule.

V. COMMENTS FROM COUNCIL

Ms. Dooley moved that Council recommend to the Secretary that the Air Quality rules contain language in their sections entitled “Inconsistency Between Rules” to read as follows: “In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method, or rule using sound scientific information.” See, 45 C.S.R. 8 proposed § 4.1. Ms. Dooley pointed out that DEP uses this language in some of its other Divisions’ rules and some states surrounding West Virginia also use this language or similar language. Mr. Raney seconded the motion and discussion ensued. Ms. Hallinan pointed out that the proposed language is vague and may cause *Daubert*-related problems for attorneys arguing before boards and the courts using these rules. A vote was taken, and Ms. Dooley’s motion passed by a majority vote of Council; Ms. Hallinan voted no and Dr. Harris abstained.

Regarding 45 C.S.R. 8, Dr. Harris asked about removing the anti-degradation section. He expressed concern about how many areas of the State are in attainment and asked if West Virginia does not still need the policy in order to stay in attainment. He was also concerned that removing the specific reference to “anti-degradation” might lead the public to believe that DEP does not enforce any such policy anymore. Mr. Mason explained that the anti-degradation was meant as a placeholder back when the rule was originally promulgated in the 1970s until the states could get their own programs up and running. Because West Virginia adopted the federal Prevention of Significant Deterioration program under 45 C.S.R. 14 in the early 1980s, the State has more than satisfied the intent of the relic “anti-degradation” language in Section 2 to protect the air quality in areas that were in attainment of the NAAQS. “Prevention of significant deterioration” in Rule 14 means the same thing as “anti-degradation.”

Regarding 45 C.S.R. 14, Dr. Harris inquired about the justification for the proposed changes to the rule. Mr. Mason explained why the rule is being amended and a discussion ensued about fugitive emissions.

In relation to 45 C.S.R. 25, Mr. Roberts asked how many hazardous waste treatment, storage, and disposal facilities are in West Virginia, and Mr. Mason advised Council that he would have to research those numbers and report back.

Finally, regarding 45 C.S.R. 34, Dr. Harris asked for a definition of "area sources" and whether the federal EPA would enforce those provisions. Mr. Mason explained what area sources are and that EPA will enforce those standards.

In relation to 33 C.S.R. 20, Ms. Dooley inquired whether hazardous waste fees were being changed, and Ms. Boggs explained that, while fees are regurgitated in this rule, the statutory authority to change the fees was set forth in the statute; there are no changes to the fee structure proposed in this rule.

Dr. Harris asked the record to reflect that the Groundwater Standards rule was not submitted by the deadline, so Council had not yet had an opportunity to review the text or a summary of the rule prior to the Council meeting. Mr. Timmermeyer was on hand and did answer questions regarding why the rule had to be promulgated this year.

Regarding 60 C.S.R. 2, Ms. Dooley inquired about the language "shall furnish copies," and Ms. Boggs explained that the language for § 7.2 is in the disjunctive: the agency shall furnish copies or advise the requester when he or she can come in and review documents or deny the request. Ms. Dooley then inquired about the new exemptions, and Ms. Boggs explained that the exemptions mirror the West Virginia Freedom of Information Act, which is set forth at W. Va. Code 29B-1-1 et seq., and the federal Freedom of Information Act. Finally, Ms. Dooley asked whether the proposed fee changes would be sufficient to cover the agency's costs in responding to FOIA requests, and Ms. Cosco affirmed that they would.

Finally, regarding 38 C.S.R. 2, Dr. Harris inquired about the provisions relating to the addition of a trust account as an approved form of bond. Specifically, he asked whether the proposed trust account would cover perpetual treatment. Mr. Clarke explained that the proposed trust account is intended to be another form of bonding, not be a replacement for the Special Reclamation Fund. Dr. Harris then inquired as to how the cost of perpetual treatment is calculated. Mr. Clarke explained that the federal Office of Surface Mining Reclamation & Enforcement (OSM) has developed a computer model that estimates cost by developing a formula based on a mechanism that allows treatment for 40 or more years.

VI. COMMENTS FROM THE PUBLIC

Mr. Garvin asked for clarification on the trust account proposed by the Division of Mining and Reclamation. Mr. Clarke answered his questions.

Mr. Garvin then had several questions for Mr. Mason and Mr. Durham regarding the proposed Air Quality rules, which were duly answered.

VII. ADJOURNMENT

Mr. Raney moved that the meeting be adjourned, Ms. Dooley seconded the motion, and it carried by acclamation of Council. The meeting was adjourned at 3:05 p.m.