

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

Form #1

Do Not Mark In This Box

2011 JUN -9 PM 2:10

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: ~~DEP~~ Division of Water & Waste Management TITLE NUMBER: 33

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code 22-18-6

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED: Hazardous Waste Management System

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: Tuesday, July 12, 2011 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection

Cooper's Rock Room

601 57th Street, Southeast

Charleston, West Virginia 25304

COMMENTS LIMITED TO: ORAL  WRITTEN  BOTH

DATE WRITTEN COMMENT PERIOD ENDS: Tuesday, July 12, 2011 TIME: 7:00 p.m.

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.

Public Information Office

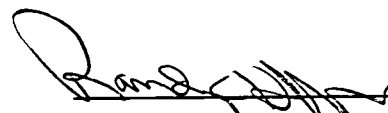
West Virginia Department of Environmental Protection

601 57th Street, SE

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  
BRIEFING DOCUMENT**

**Rule Title:** Hazardous Waste Management System

**A. AUTHORITY:** W. Va. Code § 22-18-6

**B. SUMMARY OF RULE:**

This rule regulates the generation, treatment, storage, and disposal of hazardous waste. The rule also authorizes the regulation by the Public Service Commission of hazardous waste transported via rail and by the Division of Highways of hazardous waste transported via roads and highways. The proposed rule adopts and incorporates by reference the federal regulations set forth in 40 C.F.R. Parts 124 and 260 – 279 that were in effect as of June 16, 2010. The State should adopt changes as noted in the federal Environmental Protection Agency's state authorization checklist 210, the "Standardized Permit" from 40 C.F.R. Parts 124 and 124 Subpart G. The State should adopt changes from checklist 207, the regulation of hazardous waste transportation from 40 C.F.R. Parts 263.20 and 263.21.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

This rule is proposed to adopt and incorporate by reference changes to federal regulations 40 C.F.R. Parts 124 and 260 – 279. Adoption of changes made to the federal program provides authority to the State to maintain primacy of the Hazardous Waste Management Program. A proposed change to the rule enables the issuance of a standardized permit for the treatment, storage, and disposal of hazardous waste. Another proposed change in the rule provides authority for the Public Service Commission to regulate the transportation of hazardous waste via rail, roads, and highways of the State.

**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 DEP proposed that the rule incorporate by reference the federal counterpart. 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 meeting on June 2, 2011, the Environmental Protection Advisory Council discussed the proposed rule. See attached minutes for Council's discussion.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Hazardous Waste Management System

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WVDEP - Division of Water and Waste Management

Address: Charles W. Armstead, WVDEP DWWM, 601 57th Street, Charleston, WV 25304

Phone Number: 304-926-0499 x 1130 Email: charles.w.armstead@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.

The changes addressed in this proposed rule will have no impact on costs and revenues of the state government.

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: Hazardous Waste Management System

Rule Title: \_\_\_\_\_

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

The changes addressed in this proposed rule will have no impact on costs and revenues of the state government.

**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.

The changes addressed in this proposed rule will have no impact on costs and revenues of the state government.  
There are no proposed changes that will impact the fee structure of the Hazardous Waste Management System.

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative



\_\_\_\_\_

# ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

## MEETING MINUTES

June 2, 2011

### I. CALL TO ORDER

**Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman**, called to order the regular meeting of the DEP Advisory Council at 1:35 p.m. on June 2, 2011 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, Ted Hapney, Larry Harris, Bill Raney, and Rick Roberts. Karen Price was absent.

The meeting was also attended by the following DEP personnel and invited guests: Lisa A. McClung, Deputy Cabinet Secretary; Kathy Cosco, Chief Communication Officer; James L. Mason, Division of Air Quality; Donald W. Martin, Division of Land Restoration; Charles W. Armstead, Division of Water & Waste Management; and David L. Johnston, Division of Water & Waste Management. Sherrie A. Armstrong and John Ailes of Bailey & Glasser attended the meeting at Ms. Boggs' invitation to fulfill Dr. Harris' request at the March 17 meeting that the DEP provide some information on the implications of the *West Virginia Highlands Conservancy v. Huffman* decision.

Also in attendance were the following members of the public: Don Garvin of the Ohio Valley Environmental Coalition; Don Gaseem of Trout Unlimited; and Rosa Rose.

### III. OLD BUSINESS

**Minutes of the March 17, 2011 Meeting.** The minutes were emailed and provided to Council in hard copy. Mr. Raney moved for approval of the minutes, Ms. Dooley seconded the motion, and it was carried by acclamation of Council.

### IV. SPECIAL PRESENTATION

Ms. Armstrong, who – along with Benjamin L. Bailey - represented the DEP in the Fourth Circuit Court of Appeals in *West Virginia Highlands Conservancy v. Huffman* (the “special rec” or “bond forfeiture” cases), gave a brief overview of the possible consequences of the decision rendered in that case. John Ailes of Bailey & Glasser also participated in the presentation. In sum, an unintended consequence of this ruling could be that watershed groups, which volunteer their time and resources to clean up pre-law mine sites, could be required to get NPDES permits.

Dr. Harris suggested that a way out for Good Samaritan watershed groups would be to partner with the State and let the State obtain the NPDES permits. Mr. Ailes then opined

that the chilling effect on beneficial partnerships between citizen groups and the regulatory agencies it is one of the unintended consequences of the ruling and that this is an opportunity for the DEP to look into rulemaking to address some of these issues.

Ms. Dooley asked if the agency could waive the permit application fees for Good Samaritan groups like some municipalities waive business license fees, and DEP did not foreclose that possibility. That is one of the issues that could be addressed in future rulemaking.

Mr. Roberts asked if this ruling would apply to AML, and Ms. Armstrong answered that we do not think so, since AML is governed by a separate set of rules.

Mr. Raney asked if this ruling could apply to other industrial discharges, and Ms. Armstrong answered no.

## V. PROPOSED 2012 LEGISLATIVE RULES

### Division of Air Quality

- ❖ 45 CSR 8 – *Ambient Air Quality Standards* – Annual incorporation by reference amendments to the NAAQS, including Primary National Ambient Air Quality standard for sulfur dioxide.
- ❖ 45 CSR 14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration* – Revisions to the rule incorporate changes to the federal counterpart, “Prevention of Significant Deterioration for Particulate Matter Less Than 2.5 Micrometers – Increments, Significant Impact Levels and Significant Monitoring Concentration.”
  - ◆ Dr. Harris asked the following questions regarding this rule: What is a PAL? Are there any in West Virginia? Would it apply to the TransGas facility in Mingo County? On behalf of the Division of Air Quality, James L. Mason answered that a PAL is a plant-wide applicability unit, and it may apply to the TransGas facility, but TransGas would have to apply for it. Mr. Mason was unsure if there were any PALs in West Virginia, but he advised the Council he would get back to them with a response.<sup>1</sup>
- ❖ 45 CSR 16 – *Standards of Performance for New Stationary Sources* – Annual incorporation by reference amendments to the NSPS.

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<sup>1</sup> Mr. Mason has determined since the June 2 meeting that, because the TransGas facility is a synthetic minor source, 45CSR14 did not apply to the permitting process. If TransGas were to become a major source, 45CSR14 may then apply. Mr. Mason also determined that there are no permitted PALs in West Virginia at this time.

- ❖ 45 CSR 18 – *Combustion of Solid Waste* – The revised rule incorporates by reference the amended Standards of Performance for New Commercial and Industrial Solid Waste Incineration Units and sets forth emission guidelines for existing commercial and industrial solid waste incineration units. The new CISWI language was pulled from the proposed rule based on EPA’s recent delay of the rule’s effective date.
- ❖ 45 CSR 19 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment* – Revisions to the rule include new significant impact levels promulgated by EPA.
  - ◆ Mr. Raney inquired whether Marcellus pads fall under this rule. The short answer, as provided by Mr. Garvin and Deputy Secretary McClung, is no.
- ❖ 45 CSR 25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities* – Revisions to the rule include annual incorporation-by-reference updates.
- ❖ 45 CSR 30 – *Requirements for Operating Permits* – Revisions to the rule implement the provisions of EPA’s final Greenhouse Gas Tailoring Rule. Language is added that is intended to rescind elements of the Tailoring Rule if a court, Congress, EPA or the President finds that GHGs are not subject to regulation. In order to effect the provisions of the Tailoring Rule as soon as practicable, and in accordance with EPA-mandated timelines, West Virginia has adopted this rule as an emergency rule.
  - ◆ Dr. Harris asked what an alternative operating scenario is, and Mr. Mason explained that, once an operating system is approved, the permittee can propose something different and, if it is allowed by the rule, the Secretary can approve it as an alternative operating scenario. Dr. Harris then asked what “approved replicatable methodology” is, and Mr. Mason clarified that approved replicatable methodology (“ARM”) goes along with alternative operating scenarios: we want reproducible science, and the ARM is used to prove how the permittee plans to meet its permit limits.
  - ◆ Mr. Mason also clarified for Council that the rescission language amended into the rule in the emergency rulemaking process is only applicable to greenhouse gases and not any other pollutant.
- ❖ 45 CSR 34 – *Emission Standards for Hazardous Air Pollutants* – Annual incorporation-by-reference revisions to the Hazardous Air Pollutant rule.
- ❖ 45 CSR 35 – *Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)* – This revised rule incorporates by reference the following provisions of 40 CFR 93: Revisions to the General Conformity Regulations.
- ❖ 45 CSR 42 – *Greenhouse Gas Emissions Inventory Program* – DAQ is proposing to repeal this rule because on October 30, 2009, EPA promulgated standardized greenhouse

reporting requirements, “Mandatory Reporting of Greenhouse Gases.” Because 45 CSR 42 was promulgated before the EPA finalized its mandatory greenhouse gas reporting requirements, and the rule’s approach to greenhouse gas reporting was significantly different from EPA’s final approach, the DAQ has determined that sources subject to EPA’s Mandatory Reporting of Greenhouse Gases shall not be also subject to the differing requirements of this State rule. To further eliminate this conflict, the DEP will take steps to amend W. Va. Code § 22-5-19, which authorizes the Secretary to propose legislative rules establishing a Greenhouse Gas Inventory Program. Such amendment to the Code will provide for the Cabinet Secretary to allow reporting under EPA’s Mandatory Reporting of Greenhouse Gases to satisfy greenhouse gas reporting requirements in West Virginia.

#### **DIVISION OF LAND RESTORATION**

- ❖ 60 CSR 3 – *Voluntary Remediation and Redevelopment Rule* – This rule is being revised to update the *de minimus* clean-up standards. This change is necessary, because the toxicological profiles for many chemicals in the federal IRIS database have been revised, which necessitates changes to the *de minimus* table.

#### **Division of Water & Waste Management**

- ❖ 33 CSR 1 – *Solid Waste Management Rule* – Revisions to this rule are to add the definition of “covered electronic devices” to the list of defined terms and to add covered electronic devices as an unacceptable waste banned from disposal in the State’s landfills. This revision is necessary due to the passage of Senate Bill 298 on March 12, 2010, which amended and reenacted W. Va. Code § 22-15A-25 to ban certain electronic devices from landfill disposal.
- ❖ 33 CSR 20 – *Hazardous Waste Management Rule* – Revisions to the rule include annual incorporation-by-reference updates from the federal counterpart. Further, DWWM proposes to amend the rule to reflect that the authority it previously transferred to the Division of Highways to regulate hazardous waste on the highways has been transferred by statute to the Public Service Commission when the Weights & Measures Section was transferred from the DOH to the PSC.

Dr. Harris moved that the proposed 2012 Legislative rules be approved for submission to the Legislature; Mr. Hapney seconded the motion; Mr. Raney objected only on the basis that the DAQ rules are complex and difficult to understand, and he wants to make sure DEP is not simply adopting federal recommendations without adequate consideration to the needs of the economy of West Virginia. The motion to approve the rule was then carried by acclamation of Council.

**VI. OTHER BUSINESS**

- ❖ Ms. Hallinan advised the DEP to keep pushing Marcellus regulations.
- ❖ Dr. Harris expressed serious concerns about the Marcellus permits issued in Monongalia County close to a public drinking water intake. Specifically, he opined that allowing natural gas drilling so close to a water intake is the most irresponsible siting he has ever seen and that once there has been accident, it is too late to do anything. He advised DEP that Morgantown is considering a moratorium on Marcellus drilling. He finally advised DEP that there should be a public comment period on Marcellus well work permits.
- ❖ The next Advisory Council meeting will be **Thursday, September 22, 2011 at 1:30 p.m.**

**VII. ADJOURNMENT**

Mr. Hapney moved that the meeting be adjourned, Ms. Hallinan seconded the motion, Dr. Harris objected, based on Ms. Boggs' failure to allow public comment at the meeting, and the motion carried by acclamation of Council. The meeting was adjourned at 2:30 p.m.

FILED

2011 JUN -9 PM 2: 10

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE 33

LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WASTE MANAGEMENT

SERIES 20  
HAZARDOUS WASTE MANAGEMENT SYSTEM

§33-20-1. General.

1.1. Scope. -- This rule establishes and adopts a program of regulation for the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment.

1.2. Authority. -- This rule is promulgated pursuant to the West Virginia Hazardous Waste Management Act, W. Va. Code, §22-18-6.

1.3. Filing Date. -- ~~June 16, 2011~~

1.4. Effective Date. -- ~~June 16, 2011~~

1.5. Incorporation by Reference. -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on June 1, 2011 ~~June 16, 2010~~ unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

1.5.a. In applying the federal requirements incorporated by reference throughout this rule, the following exceptions or substitutions apply, unless the context clearly requires otherwise or the referenced rule cannot be delegated to the state:

1.5.a.1. "West Virginia Department of Environmental Protection" will be substituted for "Environmental Protection Agency."

1.5.a.2. "Secretary of the West Virginia Department of Environmental Protection" will be substituted for "Administrator," "Regional Administrator," and "Director." In those sections that are not adopted by reference or that are not delegable to the state, "Administrator", "Regional Administrator", and "Director" will have the meaning defined in 40 C.F.R. §260.10.

1.5.a.3. Whenever the regulations require publication in the "Federal Register" compliance will be accomplished by publication in the "West Virginia Register," a part of the "State Register" created pursuant to the provisions of W. Va. Code, §29A-2-2 for those areas applicable and delegable to the state.

1.5.a.4. Whenever in the federal regulation reference is made to the Resource Conservation and Recovery Act of 1976 §3010, as amended (42 U.S.C. §6930), the reference is to section 4. The notification requirements of the Resource Conservation and Recovery Act of 1976 §§3010 remain in effect and will be satisfied by compliance with section 4.

1.6. Cross Reference. -- Whenever a reference is cited in a provision incorporated by reference which cross reference was not incorporated by reference, the provisions of the applicable state law and rules, if any, control to the extent of any conflict or inconsistency. Where state rules are present and there is a question, the state rules govern. Where there are no state rules present, federal regulations govern. For example, cross

reference to 40 C.F.R. part 264 subpart O -- Incinerators, which was not incorporated by reference, would need to be referenced to the applicable West Virginia Department of Environmental Protection, Division of Air Quality rule, 45CSR25, "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities."

1.7. Inconsistencies with the West Virginia Code. -- In the event a provision of the Code of Federal Regulations incorporated by reference herein includes a section that is inconsistent with the West Virginia Code, the West Virginia Code controls to the extent federal law does not preempt the state law. In the event a provision of the Code of Federal Regulations incorporated by reference herein is beyond the scope of authority granted to the Department of Environmental Protection pursuant to statute or is in excess of the statutory authority, the provision will be and remain effective only to the extent authorized by the West Virginia Code.

1.8. Provisions Applied Prospectively. -- The provisions of this rule are to be applied prospectively. All orders, determinations, demonstrations, rules, permits, certificates, licenses, waivers, bonds, authorizations and privileges that have been issued, made, granted, approved or allowed to become effective by the Secretary, and that are in effect on the date this rule becomes effective, will continue in effect according to their terms unless modified, suspended or revoked in accordance with the law.

1.9. This rule references the provisions of the West Virginia Department of Environmental Protection, Division of Air Quality rule, 45CSR25, "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities" that is in effect on the date that this rule becomes effective.

1.10. This rule excludes the following federal rules from incorporation by reference: "Revisions to the Definition of Solid Waste" in Federal Register Vol. 73, No. 211, dated

October 30, 2008.

### **§33-20-2. Hazardous Waste Management System: General.**

2.1. 40 C.F.R. Part 260. -- The provisions of 40 C.F.R. §260 are hereby adopted and incorporated by reference with the modifications, exceptions, and additions set forth in this section.

2.1.a. The definitions of terms used in this rule will have the meaning ascribed to them in 40 C.F.R. §§260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 273 and 279 with the exceptions, modifications and additions set forth in this section.

2.1.a.1. "Full regulation" means those rules applicable to generators of greater than one thousand (1,000) kilograms of non-acutely hazardous waste in a calendar month and/or who treat, store or dispose of hazardous waste at their facility.

2.1.a.2. "Stage" or "staging" means the temporary placement of off-site generated recyclable materials within a recycling facility for a period of time no longer than three (3) days. Placement of recyclable materials for longer than three (3) days is considered "storage."

2.1.b. This rule excludes any and all changes to 40 C.F.R. §260 resulting from Federal Rule "Revisions to the Definition of Solid Waste," in Federal Register Vol. 73, No. 211, dated October 30, 2008.

2.2. 40 C.F.R. §260.2. B -- The provisions of 40 C.F.R. §260.2 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code § 22-18-12.

2.3. 40 C.F.R. §260.21(d). B -- The provisions of 40 C.F.R. §260.21(d) are excepted from incorporation by reference.

## 2.4. Petitions for Waste Exclusions.

2.4.a. Any person seeking to exclude a waste at a particular generating facility from 40 C.F.R. §261.3 or 40 C.F.R. part 261, subpart D, as incorporated by this rule, may petition the Secretary for an exclusion following the procedures established in 40 C.F.R. §260.20 and 40 C.F.R. §260.22. The Department of Environmental Protection will utilize EPA guidance in evaluating delisting petitions.

2.4.b. An initial non-refundable fee of one thousand dollars (\$1,000.00) shall accompany all petitions submitted under this rule. The petitioner shall execute an agreement with the Secretary providing for the recovery of all reasonable costs incurred by the Department of Environmental Protection attributable to the review and investigation of the petition in excess of the initial fee submitted with the petition.

2.4.b.1. Recoverable costs will be determined by the number of hours worked under the agreement by the primary Department of Environmental Protection employee multiplied by two and one-half (2.5) times the hourly rate of that employee and then adding direct expenses incurred by that employee. Costs related to independent contractors retained by the Department of Environmental Protection to assist in the review and investigation of petitions will be included as direct expenses.

2.4.b.2. Within thirty (30) calendar days of receiving a petition under this section, the Department of Environmental Protection shall send the petitioner an itemized list of estimated costs it expects to incur as a result of reviewing and investigating the petition. The list will include anticipated outside contractor costs.

2.4.b.3. If, upon review of the itemized list of estimated costs submitted by the Department of Environmental Protection, the petitioner determines not to continue the

petition process, the petitioner, if he wishes to withdraw the petition, shall submit a certified letter to the Secretary withdrawing the petition. If the letter is submitted within ten (10) days of the date of receipt of the Department of Environmental Protection's list of estimated costs, the petitioner will not be liable for any costs incurred in excess of the initial application fee.

2.4.c. Where the Administrator of the EPA has granted a petition to exclude hazardous waste from 40 C.F.R. §261.3 or 40 C.F.R. part 261, subpart D, pursuant to 40 C.F.R. §260.22, the Secretary shall accept the determination and amend this rule accordingly, provided:

2.4.c.1. Petitioner submits a copy of the petition submitted to the Administrator, including all demonstrative information, and a copy of the Administrator's approval granting the exclusion pursuant to 40 C.F.R. §260.20(e); and

2.4.c.2. No scientifically supportable reasons for denying the petition are advanced that had not been presented to the Administrator.

2.5. Petitions to amend the regulations to include additional wastes as universal wastes.

2.5.a. Persons desiring to include a waste as a universal waste shall petition the Secretary for an inclusion after having received approval from the Administrator of the Environmental Protection Agency. The petition will include:

2.5.a.1. A copy of the petition submitted to the Administrator of the Environmental Protection Agency pursuant to 40 C.F.R. §260.23, including all demonstration information;

2.5.a.2. A copy of the Administrator's approval granting the petition under 40 C.F.R. §260.23 and 40 C.F.R. §260.20 and 40 C.F.R. part 273; and

2.5.a.3. Any additional information that may be required for the Secretary to evaluate the petition.

2.5.b. Within one hundred twenty (120) days of the filing of the petition the Secretary shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the Secretary shall notify the petitioner of the action in writing, setting forth the reasons therefore.

2.5.c. The Secretary shall not deny a petition to include a waste as a universal waste that has been approved by the Administrator, unless scientifically supportable reasons for the denial are advanced that had not been presented to the Administrator.

2.5.d. Any person may petition the Secretary to include a waste as a universal waste as follows:

2.5.d.1. Submit a petition to the Secretary demonstrating that regulation under the universal waste regulations of 40 C.F.R. part 273 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the Hazardous Waste Program. The petition shall also include information required by 40 C.F.R. §260.20(b) and include as many of the factors listed in 40 C.F.R. §273.81 as are appropriate for the waste or category of waste addressed in the petition.

2.5.d.2. The Secretary shall grant or deny a petition using the factors listed in 40 C.F.R. §273.81. The decision will be based on the weight of evidence showing that regulation under 40 C.F.R. part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the Hazardous Waste Program.

2.5.d.3. The decision of the Secretary will be in writing and state the

reasons to either grant or deny the petition. Any petitioner aggrieved by the decision of the Secretary may appeal the decision to the Environmental Quality Board in accordance with the provisions of W. Va. Code §22-18-20.

### **§33-20-3. Identification and Listing of Hazardous Waste.**

3.1. 40 C.F.R. Part 261. -- The provisions of 40 C.F.R. part 261 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

3.1.a. In order for a mixture of a waste and one or more hazardous wastes identified in 40 C.F.R. §261.3(a)(2)(iv) to be exempt from the definition of hazardous waste, the owner or operator shall comply with the following:

3.1.a.1. Provide a certification in writing to the Secretary that groundwater monitoring that either complies with 40 C.F.R. part 265, subpart F or that is agency approved is or will be in place at the wastewater treatment facility identified in 40 C.F.R. §261.3(a)(2)(iv). A time schedule for the installation of groundwater monitoring shall be included. This requirement does not apply to wastewater treatment units or containers.

3.1.a.2. Before claiming an exemption, the owner or operator of each wastewater treatment facility receiving mixtures of wastes under 40 C.F.R. §261.3(a)(2)(iv) shall notify the Secretary of the receipt of the wastes on a form prescribed by the Secretary.

3.1.a.3. Annually submit to the Secretary a list of hazardous wastes that are expected to be present in the mixture to be exempted.

3.2. The provisions of 40 C.F.R. §261.5 (f)(3)(iv) and (v) and 40 C.F.R. §261.5(g)(3)(iv) and (v) are excepted from incorporation by reference. Conditionally

exempt small quantity generators shall notify the Secretary of their hazardous waste activity in accordance with section 4 of this rule.

3.3. This rule excludes any and all changes to 40 C.F.R. part 261 resulting from Federal Rules: "Revisions to the Definition of Solid Waste"

#### **§33-20-4. Notification of Hazardous Waste Activity Regulations.**

4.1. Applicability. Any person who engages in a hazardous waste activity in the State of West Virginia shall notify the Secretary of these activities when that activity begins, unless those activities are exempted from the requirements of this rule.

4.1.a. Any person as described in subsection 4.1 who has notified the EPA or is subject to the requirements to notify EPA as specified in volume 45, number 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provision of section 4 of this rule.

4.1.b. The purpose of section 4 is to provide a means for the State of West Virginia to utilize the information provided by all who complied with the notification requirements of EPA as described in subdivision 4.1.a above or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in subdivision 4.1.a to notify the Secretary of their hazardous waste activities.

4.2. Notification. Any person who notified EPA of hazardous waste activities as referenced above in subsection 4.1 shall provide a copy of that notification to the Secretary.

4.2.a. Any person involved in hazardous waste activities who did not comply with the notification requirements of EPA, as referenced above in subsection 4.1, but is subject to those requirements shall notify the Secretary in writing of his or her hazardous

waste activities within thirty (30) days of the effective date of this rule. Notification may be accomplished by the use of EPA Form 8700-12, RCRA Subtitle C Site Identification Form, or the provision of the same information in any other manner selected by the notifier.

4.2.b. Any person exempted from the federal notification requirements as specified in 40 C.F.R. §§261.6(b) and 261.5, but subject to West Virginia notification requirements, shall notify the Secretary in writing of his or her hazardous waste activities on the date of initiation of these activities. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.c. One notification form is required for each generator.

4.2.d. A notification form is required for each storage, treatment, disposal, or other facility. However, if one facility site includes more than one storage, treatment, or disposal activity, only one notification form for the entire facility site is required.

4.2.e. Generators that store, treat, or dispose of hazardous waste on-site shall file a notification form for generation activities, as well as storage, treatment, and disposal activities, unless those activities are exempted from the requirements of this rule.

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subsection 4.1.a shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the Administrator.

#### **§33-20-5. Standards Applicable to Generators of Hazardous Waste.**

5.1. 40 C.F.R. Part 262. -- The provisions of 40 C.F.R. part 262 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

5.2. 40 C.F.R. §262.10(g). -- The provisions of 40 C.F.R. §262.10(g) will be excepted from incorporation.

5.2.a. A person who generates a hazardous waste as defined by 40 C.F.R. part 261 is subject to the compliance requirements and penalties prescribed in W. Va. Code §22-18-1 et seq. if he or she does not comply with the requirements of this rule. This rule in no way abrogates the enforcement authority of the Resource Conservation and Recovery Act of 1976 §3008.

5.2.b. All references to 40 C.F.R. §262.10(g) will be deemed references to subsection 5.2 of this rule and its subdivisions, as appropriate.

5.3. 40 C.F.R. §262.10(j). -- The provisions of 40 C.F.R. §262.10(j) (1) and (2) including Table 1 will be excepted from incorporation.

5.4. 40 C.F.R. Part 262, Subpart E. -- The provisions of 40 C.F.R. part 262, subpart E -- Exports of Hazardous Waste are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.5.a above does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of subpart E shall file with the Secretary copies of all documentation, manifests, exception reports, annual reports or records submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in subpart E.

5.5. 40 C.F.R. Part 262, Subpart H. -- The provisions of 40 C.F.R. part 262, subpart H -- Transboundary Shipments of Hazardous Waste for Recovery within the OECD are hereby adopted and incorporated by reference. The substitution of terms in subdivision ~~1.6.a~~ 1.5.a above does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of subpart H shall file with the

Secretary copies of all documentation, manifests, exception reports, annual reports or records submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in subpart H.

5.6. 40 C.F.R. Part 262, Subpart I. -- The provisions of 40 C.F.R. part 262, subpart I -- New York State Public Utilities will be excepted from incorporation.

5.7. 40 C.F.R. Part 262, Subpart J. -- The provisions of 40 C.F.R. part 262, subpart J -- University Laboratories XL Project -- Laboratory Environmental Management Standard will be excepted from incorporation.

#### **§33-20-6. Standards Applicable to Transporters of Hazardous Waste.**

6.1. 40 C.F.R. Part 263. -- The provisions of 40 C.F.R. part 263 are hereby adopted and incorporated by reference, insofar as those regulations relate to the transportation of hazardous waste by air and water.

6.2. ~~The use of railroads for the t~~ Transportation of hazardous waste by railroad, roads, and highways is regulated by the West Virginia Public Service Commission rules, "Rules and Regulations Governing the Transportation of Hazardous Waste by Rail , Roads, and Highways", 150CSR11. The use of the state highways for the transportation of hazardous waste is also regulated by the West Virginia Division of Highways at 157CSR7, "Transportation of Hazardous Wastes upon the Roads and Highways."

#### **§33-20-7. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.**

7.1. 45CSR25, Division of Air Quality, -- The standards in this section apply to owners and operators of all facilities that treat, store or dispose of hazardous waste, except as otherwise provided by law. In addition to the standards in section 7 of this rule, 45CSR25, "Control of Air Pollution from Hazardous

Waste Treatment, Storage and Disposal Facilities,” applies to management facilities that may emit hazardous waste or the constituents thereof into the atmosphere, including incineration facilities, except as otherwise provided by law. For purposes of this section, the following persons are considered to be incinerating hazardous waste:

7.1.a. Owners or operators of hazardous waste incinerators; and

7.1.b. Owners or operators of boilers or industrial furnaces used to destroy wastes.

7.2. 40 C.F.R. Part 264. -- The provisions of 40 C.F.R. part 264 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

7.3. Required Receipt of Identical Notification. -- The provisions of 40 C.F.R. §§264.12(a)(1) and (2) are retained by the Environmental Protection Agency; however, the Secretary shall receive identical notification.

7.4. Releases from Solid Waste Management Unit. -- The provisions of 40 C.F.R. part 264, subpart F -- Releases from solid waste management units are incorporated by reference with the following modifications, exceptions and additions.

7.4.a. For purposes of 40 C.F.R. §264.92, reference to the “Regional Administrator” will be to the Secretary of the Department of Environmental Protection. The Secretary establishes groundwater protection standards pursuant to the authority granted to the Secretary in W. Va. Code § 22-12-4.

7.4.b. For purposes of 40 C.F.R. §264.94 and subparagraphs thereof, the agency rule on groundwater protection standards, 47CSR12, will apply as required pursuant to the authority granted the Secretary in W. Va. Code, § 22-12-4.

7.4.c. The provisions of 40 C.F.R.

§264.99(g) are incorporated by reference with the following modifications:

7.4.c.1. The Secretary shall specify in the facility permit the frequencies for collecting samples required under 40 C.F.R. §264.99(g). This frequency shall not be less than once annually.

7.5. Financial Requirement. -- The provisions of 40 C.F.R. part 264, subpart H -- Financial Requirements are adopted and incorporated by reference with the following modifications:

7.5.a. The provisions of 40 C.F.R. §§264.149 and 264.150 are excepted from incorporation by reference.

7.6. Provisions Relating to Incinerators. -  
- The provisions of 40 C.F.R. §§264.341, 264.342, 264.343, 264.344, 264.345 and 264.347(a) relating to incinerators are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from incinerators. The Division of Air Quality retains its authority to enforce the air monitoring items listed in 40 C.F.R. §264.347(a) related to incinerating hazardous waste. The Secretary retains authority to enforce 40 C.F.R. §§264.347(b)(c)(d).

7.6.a. Consult the Division of Air Quality, 45CSR25, “Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities.”

7.7. 40 C.F.R. Part 264, Subparts AA, BB, CC and 40 C.F.R. §264.1080(f); and 40 C.F.R. §264.1080(g). -- The provisions of 40 C.F.R. §264.1080(f); and 40 C.F.R. §264.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 C.F.R. part 264, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding air emissions from process vents, equipment leaks, tanks, surface impoundments and containers.

**§33-20-8. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.**

8.1. 40 C.F.R. Part 265. -- The provisions of 40 C.F.R. part 265 are adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

8.2. 40 C.F.R. §§265.12(a), 265.149 and 265.150. -- The provisions of 40 C.F.R. §§265.12(a)(1) and (2), 265.149, and 265.150 are excepted from incorporation by reference. The Secretary shall receive identical notification.

8.3. 40 C.F.R. §§265.341, 265.345, 265.347 (a), 265.352. -- The provisions of 40 C.F.R. §§265.341, 265.345, 265.347(a) and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from incinerators. The Division of Air Quality retains its authority to enforce the air monitoring items listed in 40 C.F.R. §265.347(a) related to incinerating hazardous waste. The Secretary retains authority to enforce 40 C.F.R. §§265.347(b)(c)(d).

8.4. Thermal Treatment. -- The provisions of 40 C.F.R. Part 265, Subpart P -- Thermal Treatment are incorporated by reference except for the provisions of 40 C.F.R. §265.375 and 40 C.F.R. §265.383 that are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from thermal treatment units.

8.5. 40 C.F.R. Part 265 Subparts AA, BB, CC and 40 C.F.R. §265.1080(f); and 40 C.F.R. §265.1080(g). -- The provisions of 40 C.F.R. §265.1080(f); and 40 C.F.R. §265.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 C.F.R. part 265, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding air emission standards for process vents, air emission standards for equipment leaks, and

air emission standards for tanks, surface impoundments and containers.

**§33-20-9. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.**

9.1 40 C.F.R. Part 266. -- The provisions of 40 C.F.R. part 266 are hereby adopted and incorporated by reference. Consult the rules of the Division of Air Quality regarding Subpart H of this part.

**§33-20-10. Land Disposal Restrictions.**

10.1. 40 C.F.R. Part 268. -- The provisions of 40 C.F.R. part 268 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

10.2. 40 C.F.R. §§268.5, 268.6, 268.10 - 13, 268.42(b) and 268.44. -- The provisions of 40 C.F.R. §§268.5, 268.6, 268.10, 268.11, 268.12, 268.13, 268.42(b) and 268.44 are excepted from incorporation by reference.

10.3. Definition of Administrator in 40 C.F.R. §268.40(b). The term "Administrator" in 40 C.F.R. §268.40(b) will retain its meaning as defined in 40 C.F.R. §260.10.

**§33-20-11. The Hazardous Waste Permit Program and Standardized Permit.**

11.1. 40 C.F.R. Part 270. -- The provisions of 40 C.F.R. part 270, and 40 C.F.R. part 267 and 40 C.F.R. part 124, subpart G are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

11.2. 40 C.F.R. §270.2 Definitions.

11.2.a. Definition of "RCRA permit" -- For purposes of this section, the term "RCRA permit" means "West Virginia Hazardous Waste Management Permit." The following additional requirements will apply

to obtain a Hazardous Waste Management Permit in West Virginia. All references in 40 C.F.R. part 270 and 40 C.F.R. part 267 to 40 C.F.R. part 124 will be deemed to be references to the applicable provisions of subsections 11.4 through 11.17 of this rule. To the extent of any inconsistency with 40 C.F.R. part 270 and 40 C.F.R. part 267, the specific provisions contained herein will control.

11.2.b. This rule excludes any and all changes to 40 C.F.R. part 270 resulting from Federal Rule "Revisions to the Definition of Solid Waste."

### 11.3. Application Fees.

11.3.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, shall submit as part of the application a money order or cashier's check payable to "The Hazardous Waste Management Fund" of the state treasury. Persons required to obtain a permit-by-rule pursuant to this rule are not required to pay a permit application fee.

11.3.b. The fee will be determined by the schedule set forth in Table 1. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars (\$50,000) then the person required to pay the fees may, at the person's option, elect to submit the fee payments in installments over a three (3) year period. The installments submitted to the Department of Environmental Protection may not be less frequent than annually and the amount submitted annually may not be less than one-third (1/3) of the total amount due.

11.3.c. The fee for permit renewal is the same as for an initial permit.

### 11.4. Pre-application Public Meeting and Notice

11.4.a. **Applicability.** The requirements of this subsection will apply to

West Virginia Hazardous Waste Management Part B permit applicants seeking initial permits for hazardous waste management units. The requirements of this section will also apply to West Virginia Hazardous Waste Management Part B permit applicants seeking renewal of permits for those units, when the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a Class 3 permit modification (See 40 C.F.R. §270.42 for a description of permit modifications). The requirements of this section shall also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR part 270, subpart J), including renewal of a standardized permit for such units, where the renewal is proposing a significant change in facility operations, as defined at 40 CFR § 124.211(c). The requirements of this section do not apply to permit modifications under 40 C.F.R. §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.

11.4.b. Prior to the submission of a West Virginia Hazardous Waste Management Part B permit application for a facility, or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J), the applicant shall 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.

11.4.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 11.4.b, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the Part B application, in accordance with 40

C.F.R. §270.14(b), or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J).

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

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

11.4.d.1.A. A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in paragraph 11.4.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 publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

11.4.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 11.4.d.2. If the applicant places the sign on the facility property, then the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

11.4.d.1.C. A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in paragraph 11.4.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.

11.4.d.1.D. A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the permitting

agency, 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.

11.4.d.2. The notices required by paragraph 11.4.d.1. shall include:

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

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

11.4.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;

11.4.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

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

11.5. Public Notice Requirements at the Application Stage.

11.5.a. Applicability. The requirements of this subsection apply to all West Virginia Hazardous Waste Management Part B permit applicants seeking initial permits for hazardous waste management units. The requirements of this section also apply to Hazardous Waste Management Part B permit applicants seeking renewal of permits for these units upon the expiration of the existing permit. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR part 270, subpart J). The requirements of this section do not apply to

permit modifications under 40 C.F.R. §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.

11.5.b. Notification. The Secretary shall provide public notice as required in subsection 11.5 when a Part B permit application has been submitted. The Secretary shall provide public notice to:

11.5.b.1. The applicant;

11.5.b.2. All persons on a mailing list developed pursuant to subparagraph 11.11.d.1.D; and

11.5.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.

11.5.b.4. Any person otherwise entitled to receive notice under subdivision 11.5.b may waive the right to receive notice for any classes and categories of permits.

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

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

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

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

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

11.5.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

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

11.5.d. Concurrent with the notice required under subdivision 11.5.b, the Secretary shall place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

#### 11.6. Information Repository.

11.6.a. Applicability. The requirements of this section apply to all applicants seeking West Virginia Hazardous Waste Management Permits for hazardous waste management units.

11.6.b. The Secretary shall 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.

11.6.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.

11.6.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.

11.6.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.

11.6.f. The facility's owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary shall close the repository at his or her discretion, based on the factors listed in subdivision 11.6.b.

#### 11.7. Application for a Permit.

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

11.7.b. The Secretary shall review for completeness every application. Each application submitted by a new hazardous waste management facility shall be reviewed for completeness by the Secretary within thirty (30) days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application), shall be reviewed for completeness within sixty (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 shall request additional information from the applicant, but only when necessary to clarify, modify or supplement previously submitted material. Request for additional information shall not render an application incomplete.

11.7.c. If the applicant fails or refuses to correct deficiencies in the application, the permit shall be denied and appropriate enforcement actions will be taken pursuant to W. Va. Code §§ 22-18-15, 22-18-16, and 22-18-17.

11.7.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 will be scheduled.

11.7.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 11.7.b above.

11.7.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:

11.7.f.1. Prepare a draft permit;

11.7.f.2. Give public notice;

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

11.7.f.4. Issue a final permit.

#### 11.8. Modification, Revocation and Reissuance, or Termination of Permits.

11.8.a. Permits shall 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 shall only be modified, revoked and reissued, or terminated for the reasons specified in 40 C.F.R. §§270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

11.8.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 Environmental Quality Board in accordance with section 16 of this rule.

11.8.b.1. If the Secretary initially decides to modify or revoke and reissue a permit under 40 C.F.R. §§270.41 (other than § 270.41(b)(3)) or 270.42 (c), he or she shall prepare a draft permit pursuant to subsection 11.9 below, 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, other than under 40 CFR 270.41(b)(3), the Secretary shall require the submission of a new application. In the case of revoked or reissued permits under 40 CFR 270.41(b)(3), the Director and the permittee shall comply with the appropriate requirements in 40 CFR part 124, subpart G for RCRA standardized permits

11.8.b.2. In a permit modification under this section, only those conditions to be modified will be reopened when a new draft permit is prepared. When a permit is revoked

and reissued under this section, the entire permit is reopened. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

11.8.b.3. "Classes 1 and 2 Modifications" as defined in 40 C.F.R. §§270.42 (a) and (b) are not subject to the requirements of this section.

11.8.c. If the Secretary decides to terminate a permit under 40 C.F.R. §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 that follows the same procedures as any draft permit prepared under subsection 11.9 below.

#### 11.9. Draft Permits.

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

11.9.b. If the Secretary 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 that follows the same procedures as any draft permit prepared under this section. If the Secretary's final decision is that the initial 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.

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

11.9.c.1. All conditions under 40 C.F.R. §§270.30 and 270.32;

11.9.c.2. All compliance schedules under 40 C.F.R. §270.33;

11.9.c.3. All monitoring requirements under 40 C.F.R. §270.31; and,

11.9.c.4. Standards for treatment, storage, and/or disposal and other permit conditions under 40 C.F.R. §270.30.

11.9.d. All draft permits prepared by the Secretary under this section shall be accompanied by a fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment.

#### 11.10. Fact Sheet

11.10.a. A fact sheet shall be prepared for every draft permit for a hazardous waste management facility that the Secretary finds is the subject of wide-spread public interest or raises major issues. The fact sheet will 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 to anyone who requests it.

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

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

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

11.10.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;

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

11.10.b.5. A description of the process for reaching a final decision on a draft permit including:

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

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

11.10.b.5.C. Any other procedures by which the public participates in the final decision.

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

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

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

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

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

11.11.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under subsection 11.8 above. Written notice of that denial shall be given to the requester and to the permittee.

11.11.c. Timing. Public notice of the preparation of a draft permit (including a Notice of Intent to Deny a Permit Application) required under subdivision 11.11.a will 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.)

11.11.d. Public notice of activities

described in subdivision 11.11.a shall be given by the following methods:

11.11.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):

11.11.d.1.A. The applicant;

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

11.11.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;

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

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

11.11.d.1.D.2. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

11.11.d.1.D.3. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The Secretary shall update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Secretary shall delete from the lists the name of any person who fails to respond to the request.

11.11.d.1.E. To any unit of

local government having jurisdiction over the area where the facility is proposed to be located; and

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

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

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

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

11.11.e. All public notices issued under this section will contain the following minimum information:

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

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

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

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

11.11.e.5. A brief description of the comment procedures required by

subsections 11.12 and 11.13 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.

11.11.e.6. The location of the administrative record, the times that the record will be open for public inspection; and

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

11.11.f. Public notices for hearings. In addition to the general public notice described in subdivision 11.11.e, the public notice of a hearing will contain the following information:

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

11.11.f.2. Date, time, and place of the hearing; and

11.11.f.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

11.11.g. In addition to the general public notice described in subdivision 11.11.e, all persons identified in subparagraphs 11.11.d.1.A, 11.11.d.1.B, and 11.11.d.1.C shall be mailed a copy of the fact sheet, the permit application, and the draft permit, as applicable.

11.12. Public Comments and Requests for Public Hearings.

11.12.a. During the public comment period provided under subsection 11.11, any interested person may submit written comments on the draft permit and may request a public hearing, if a hearing has not already been scheduled.

11.12.b. A request for a public hearing shall be in writing and shall 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 11.16 below.

11.13. Public Hearings.

11.13.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.

11.13.b. The Secretary shall 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.

11.13.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 11.11.c. Whenever possible, the Secretary shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

11.13.d. Public notice of the hearing will be given as specified in subsection 11.11.

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

11.13.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits shall be set upon the time allowed for oral statements, and the submission of statements in writing will be required. The public comment period under subsection 11.11 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

11.13.g. A tape recording or written transcript of the hearing shall be made

available to the public.

11.14. Reopening of the Public Comment Period.

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

11.14.a.1. Prepare a new draft permit, appropriately modified, under subsection 11.9.

11.14.a.2. Prepare a revised fact sheet under subsection 11.10 and reopen the comment period.

11.14.a.3. Reopen or extend the comment period under subsection 11.11 to give interested persons an opportunity to comment on the information or arguments submitted.

11.14.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 11.11 shall define the scope of the reopening.

11.14.c. Public notice of any of the above actions will be issued subsection 11.11 above.

11.15. Issuance and Effective Date of Permit.

11.15.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. For purposes of this section the final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

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

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

11.15.b.2. Review is requested or evidentiary hearing is requested; or

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

11.16. Response to Comments.

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

11.16.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

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

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

11.17. Administrative Record.

11.17.a. The provisions of a draft permit prepared under subsection 11.9 shall be based on the administrative records consisting of:

11.17.a.1. The application and any supporting data furnished by the applicant;

11.17.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

11.17.a.3. The fact sheet;

11.17.a.4. All documents cited in the fact sheet; and

11.17.a.5. Other documents contained in the supporting file for the draft permit.

11.17.b. The Secretary shall base final permit decisions on the administrative record consisting of:

11.17.b.1. Administrative record for the draft permit;

11.17.b.2. All comments received during the public comment period provided under subsection 11.11 (including any extension or reopening under subsection 11.14);

11.17.b.3. The tape or transcript of any hearing(s) held under subsection 11.13;

11.17.b.4. Any written material submitted at the hearing;

11.17.b.5. The response to comments required by subsection 11.16 that identify and support any change made in the draft permit and any new material placed in the record under that subsection;

11.17.b.6. Other documents contained in the supporting file for the permit;

11.17.b.7. An addendum to the fact sheet if needed; and

11.17.b.8. The final permit.

11.17.c. The administrative record shall be complete on the date the final permit is issued.

11.17.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 11.17.a and 11.17.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.

#### 11.18. Public Access to Information.

11.18.a. Any records, reports, or information and any permit, permit applications, 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 those records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Secretary shall consider, treat, and protect those records as confidential.

11.18.b. It shall be the responsibility of the person claiming any information as confidential under the provisions of this subsection to clearly mark each page containing that information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that the person believes that the information is entitled to protection.

11.18.c. Any document submitted to the Secretary that contains information for which claim of confidentiality is made must be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Secretary. The document shall be submitted in two (2) separate parts. The first part shall contain all information that is not deemed by the person preparing the report as confidential and shall include appropriate cross-references to the second part, which contains data, words, phrases, paragraphs or pages and appropriate affidavits containing or relating to information that is claimed to be confidential.

11.18.d. No information shall be protected as confidential information by the Secretary unless it is submitted in accordance with the provisions of subdivision 11.18.c above, and no information that is submitted in accordance with the provision of subdivision

11.18.c shall be afforded protection as confidential information unless the Secretary finds that the protection is necessary to protect trade secrets. The person who submits information claimed to be confidential shall receive written notice from the Secretary as to whether the information has been accepted as confidential or not.

11.18.e. All information that meets the tests of subdivision 11.18.d shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If the person fails to satisfactorily demonstrate to the Secretary that information in the form presented meets the criteria of subdivision 11.18.d, the Secretary shall mark the information "REJECTED" and promptly return it to the person who submitted the information. The Secretary shall retain a copy of the information for reference.

11.18.f. Nothing contained herein shall be construed to restrict the release of relevant confidential information during situations declared to be emergencies by the Secretary.

11.18.g. Nothing in subsection 11.18 shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of State or Federal government concerned with effecting the purposes of this subsection.

11.18.h. Persons interested in obtaining information pursuant to this subsection shall submit a request in accordance with the Freedom of Information Act, W. Va. Code § 29B-1-1, et seq.

11.19. 40 C.F.R. §270.12. The provisions of 40 C.F.R. §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provision of W. Va. Code, § 22-18-12 and subsection 11.18 of this rule.

11.20. 40 C.F.R. §270.24. The provisions of 40 C.F.R. §270.24 are excepted from incorporation by reference. Consult the rules

of the Division of Air Quality regarding emissions from process vents.

11.21. 40 C.F.R. §§270.60(b) and 270.64. The provisions of 40 C.F.R. §§270.60(b) and 270.64 are hereby adopted and incorporated by reference. Consult the rules of the Division of Water and Waste Management regarding additional requirements for underground injection wells.

11.22. 40 C.F.R. §270.155. The provisions of 40 C.F.R. §270.155 relating to the administrative appeal of a decision to approve or deny a Remedial Action Plan (RAP) application are hereby modified for the purposes of this rule as follows: Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Secretary's decision to approve or deny the RAP application to the Environmental Quality Board pursuant to W. Va. Code § 22-18-20. Any person who did not file comments or did not participate in any public hearing(s) on the draft RAP may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of a RAP may be made to the same extent as for final permit decisions under section 11 of this rule. The Secretary shall give public notice of any grant of review of a RAP by the Environmental Quality Board through the same means used to provide notice under subsections 11.4 through 11.17 above.

### **§33-20-12. Deed and Lease Disclosure; Notice in Deed to Property.**

12.1. Recording Requirement. -- The owner of the property on which a hazardous waste management facility is located shall record, in accordance with State law, a notation on the deed or lease to the facility property -- or on some other instrument that is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

12.1.a. The land has been used to manage hazardous wastes; and

12.1.b. Its use is restricted under 40 C.F.R. §264.117(c).

12.2. Upon actual transfer of property that contains hazardous wastes that have been stored, treated, or disposed of, the previous owner shall notify the Secretary in writing of the transfer.

12.3. Other Requirements. -- Nothing contained in this section will relieve any person from complying with the requirements on deed and lease disclosures set forth in W. Va. Code § 22-18-21.

### **§33-20-13. Universal Waste Rule.**

13.1. 40 C.F.R. Part 273. -- The provisions of 40 C.F.R. part 273 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

13.2. 40 C.F.R. §§273.20, 273.40, 273.56 -- The provisions of 40 C.F.R. §§273.20, 273.40, and 273.56 relating to exports are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.6.a does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of 40 C.F.R. part 273 shall file with the Secretary copies of all documentation, manifests, exception reports, annual reports or records submitted to EPA, the Administrator or the Regional Administrator as required by 40 C.F.R. part 273.

13.3. 40 C.F.R. §273.70 -- The provisions of 40 C.F.R. §273.70 "Imports" are hereby adopted and incorporated by reference. Persons managing universal waste that is imported to West Virginia are subject to the requirements of this rule.

13.4. 40 C.F.R. §§273.80 and 273.81 -- The provisions of 40 C.F.R. §§273.80 and 273.81 are excepted from incorporation by reference. Consult the provisions of subdivision 2.5.d above to petition to include a

waste as a universal waste.

### **§33-20-14. Standards for the Management of Used Oil.**

14.1. 40 C.F.R. Part 279. -- The provisions of 40 C.F.R. part 279 are hereby adopted and incorporated by reference, with the exception contained in this section. Consult the rules of the Division of Air Quality regarding the burning of used oil.

14.2. 40 C.F.R. §279.82(b). -- The term "EPA" at 40 C.F.R. §279.82(b) will mean United States Environmental Protection Agency.

### **§33-20-15. Standards for Hazardous Waste Recycling.**

15.1 The provisions of 40 C.F.R. §261.6 are hereby adopted and incorporated by reference, with the modifications contained in this section.

15.2 Standards Applicable To All Hazardous Waste Recycling Activities.

15.2.a Any residual material resulting from a recycling process shall be evaluated in accordance with section 3 of this rule to determine whether it is subject to regulation as a hazardous waste.

15.2.b Any facility that treats hazardous waste without recycling it, or that treats hazardous waste prior to recycling it, is subject to regulation under section 11 above. Generators that treat hazardous waste in containers or tanks in compliance with 40 C.F.R. §262.34 are exempt from regulation under section 11 for that treatment activity.

15.2.c Owners or operators of facilities with hazardous waste management units that recycle hazardous wastes are subject to section 7 of this rule.

15.3 Hazardous Waste Recycling At Off-Site Facilities.

15.3.a. Owners or operators of facilities that receive recyclable materials, stage recyclable materials, and recycle them without storing them before they are recycled are subject to:

15.3.a.1. The requirements of subsection 15.2 of this rule;

15.3.a.2. The generator requirements of section 5 of this rule; and

15.3.a.3. Financial Requirements -- Prior to staging any material, owners or operators shall demonstrate financial assurance for closure of the facility by:

15.3.a.3.A. Maintaining a closure cost estimate that meets the requirements of 40 C.F.R. § 265.142 and that has been approved by the Secretary; and

15.3.a.3.B. Establishing financial assurance in accordance with 40 C.F.R. §265.143.

15.3.b. Owners or operators of facilities that store recyclable materials before they are recycled are subject to section 11 of this rule and to all applicable provisions of sections 1, 3, and 5.

#### **§33-20-16. Appeal Rights.**

Any person aggrieved or adversely affected by the failure or refusal of the Secretary to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the Secretary under the provisions of this rule, may appeal to the Environmental Quality Board in accordance with the provisions of W. Va. Code §§ 22-18-22 and 22B-1-1 et seq.

**TABLE 1**  
**TABLE 1**  
**PERMIT APPLICATION FEE SCHEDULE**

**STORAGE**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>	<b>FEE</b>
S01 Container	<100 tons capacity \$2,500.00	>100 tons capacity \$3,750.00
S02 Tank	<100 tons capacity \$2,500.00	>100 tons capacity \$3,750.00
S04 Surface Impoundment	<1,000 tons capacity \$10,000.00	>1,000 tons capacity \$12,500.00
S05 Drip Pad	\$2,500.00	
S03 Waste Pile	<100 tons capacity \$5,000.00	>100 tons capacity \$7,500.00
S06 Waste Pile (Containment Bldg.)	<100 tons capacity \$5,000.00	>100 tons capacity \$7,500.00

**DISPOSAL**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>	<b>FEE</b>
D80 Landfill	<1,000 tons/year \$15,000.00	>1,000 tons/year \$25,000.00
D81 Land Application	<1,000 tons/year \$15,000.00	>1,000 tons/year \$25,000.00
D83 Surface Impoundment	<1,000 tons/year \$15,000.00	>1,000 tons/year \$25,000.00

**TABLE 1  
PERMIT APPLICATION FEE SCHEDULE  
(CONTINUED)**

**TREATMENT**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>	<b>FEE</b>
T01 Tank	<100 tons capacity \$2,500.00	>100 tons capacity \$3,750.00
T02 Surface Impoundment	<1,000 tons/year \$10,000.00	>1,000 tons/year \$12,500.00
T03 Incinerator	<1,000 tons/year \$5,000.00	>1,000 tons/year \$7,500.00
T80 thru T93 Boiler/Industrial Furnace	<1,000 tons/year \$5,000.00	>1,000 tons/year \$7,500.00
T04 Other	\$5,000.00	\$7,500.00
T-94 Containment Bldg. Treatment	\$5,000.00	\$7,500.00

**EMERGENCY PERMITS**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>
State and Federal	Nil
Others	\$500.00

**TABLE 1  
PERMIT APPLICATION FEE SCHEDULE  
(CONTINUED)**

**MISCELLANEOUS**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>
Permit Modification under 40 C.F.R., 270.42 (Class I)	\$ 500.00
Permit Modification under 40 C.F.R., 270.42 (Class II and III) HWIR Staging Pile	\$ 1,250.00
Modification under 40 C.F.R., 270.41	\$ 2,500.00
Post-Closure Care Permit	\$15,000.00
Closure Plans	\$ 1,500.00

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 124, 260, 261, 267, and 270**

[RCRA-2001-0029; FRL-7948-4]

RIN 2050-AE44

**Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing revisions to the RCRA hazardous waste permitting program, originally proposed on October 12, 2001, to allow for a "standardized permit." The standardized permit will be available to RCRA treatment, storage, and disposal facilities (TSDs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings.

The standardized permit will also be available to facilities which receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and which then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. The standardized permit will streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits.

This rule finalizes the proposal, with changes based on public comments. In the preamble to proposed rule, the Agency also requested comments on other permitting-related topics including: how cleanups under non-RCRA state cleanup programs might be reflected in RCRA permits; the conclusions about captive insurance in a March, 2001 report by EPA's Inspector General; and whether insurers that provide financial assurance for hazardous waste and PCB facilities have a minimum rating from commercial rating services. The Agency is not taking action at this point on these questions.

**DATES:** This rule is effective on October 11, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 11, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. RCRA-2001-0029. All documents

in the docket are listed in the DOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in DOCKET or in hard copy at the Resource Conservation and Recovery Act (RCRA) Docket, EPA/DC, EPA West, Room B102, 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

**FOR FURTHER INFORMATION CONTACT:** Jeff Gaines, Permits and State Programs Division, Office of Solid Waste, Mail Code 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-8655; fax number: 703-308-8609; e-mail address: [gaines.jeff@epa.gov](mailto:gaines.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**How Can I Get Copies of the Standardized Permit Rule and Other Related Information?**

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA-2001-0029. The official public docket is the collection of materials specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the RCRA Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

2. Electronic Access. You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment

system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number. The official record for this action will be kept in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center.

Our responses to comments, whether the comments are written or electronic, appear in a response to comments document that we will place in the official record for this rulemaking.

Acronyms used in today's preamble are listed below:

APA: Administrative Procedures Act  
 EAB: Environmental Appeals Board  
 EPA: Environmental Protection Agency  
 CAMU: Corrective Action Management Unit

CFR: Code of Federal Regulations  
 EO: Executive Order

FR: Federal Regulations

HSWA: Hazardous and Solid Waste Amendments

MOU: Memorandum of Understanding  
 MSWLF: Municipal Solid Waste Landfill Facilities

NAICS: North American Industry Classification System

NPDES: National Pollution Discharge Elimination System

NTTAA: National Technology Transfer and Advancement Act

OMB: Office of Management and Budget

PIT: Permit Improvement Team

PPE: Personal Protection Equipment

RCRA: Resource Conservation and Recovery Act

RFA: RCRA Facility Assessment

SIC: Standard Industrial Classification

SBREFA: Small Business Regulatory Enforcement Fairness Act

SWMU: Solid Waste Management Unit  
 TSD: Treatment Storage and Disposal (facility)

UMRA: Unfunded Mandates Reform Act

The contents of today's preamble are listed in the following outline:

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- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- VIII. List of References
- I. Authority
- The Environmental Protection Agency is promulgating these regulations under

the authority of sections 1003, 2002(a), 3004, 3005, 3006, 3007, and 3010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

**II. Overview and Background**

**A. Background**

On October 12, 2001, we proposed revisions to the RCRA Hazardous Waste permitting program to allow for a “standardized permit” for RCRA TSDs that are otherwise subject to permitting and that generate and then store and/or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. In the proposal, we also requested comment on expanding the scope of the rule, e.g., to all off-site facilities, to facilities who

centralize their waste management operations, or to recyclers. The proposal laid out a streamlined approach to the permitting process, anticipating savings to both the regulatory authority and the permit applicant, while still providing protection to human health and the environment. Today’s final rule adopts that proposal with some changes based on comments.<sup>1</sup>

**B. Overview**

This final rule describes the standardized permit, who is eligible for the permit, how facilities apply for the permit, how to make changes to the permit, and what the responsibilities are for the regulatory authority in reviewing and issuing the permit.

**1. Effect of Today’s Rule**

Today’s action potentially affects about 870 to 1,130 private sector and federal facilities that (a) generate and then store and/or non-thermally treat

hazardous wastes on-site in tanks, containers, and/or containment buildings; and (b) which receive hazardous waste generated off-site by a generator that is under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. We estimate that these three types of eligible units represent 50% prevalence of the eleven major types of hazardous waste management units. Table 1 below identifies the economic sectors and associated counts of RCRA hazardous waste management units and facilities likely to be affected by this action. It is possible that other types of entities not identified in the Table could also be impacted; however the rule only affects three types of waste units. To determine whether you may be impacted, you should carefully examine the applicability section of the rule.

**TABLE 1.—IDENTITY OF ECONOMIC SECTORS WHICH OWN AND OPERATE FACILITIES POTENTIALLY AFFECTED BY THIS RULE\***

SIC code	Economic sector	NAICS code	Count of facilities with potentially affected hazardous waste management units (Note: low-end represents “on-site” only, and high-end represents on-site + off-site units)		
			Waste Containers	Waste tank systems*	Waste containment buildings
0	Agriculture, Forestry & Fisheries	11	21 to 30	12 to 17	0.
1	Mining, Oil/Gas & Construction	21, 23	26 to 37	16 to 23	0.
2	Manufacturing (Food, Textile/Apparel, Lumber/Wood, Furniture/Fixtures, Paper, Printing/Publishing, Chemicals & Allied Products, Petroleum/Coal).	31–33, 511	427 to 606	313 to 445	5 to 7.
3	Manufacturing (Rubber/Plastic, Leather, Stone/Clay/Glass, Primary Metals, Fabricated Metals, Industrial Machinery, Electronics, Transportation Equipment, Instruments, & Misc. Mfg).	31–33	285 to 405	136 to 193	17 to 24.
4	Transport, Communication, Utilities	22, 48, 49, 513, 562.	272 to 386	201 to 285	10 to 14.
5	Wholesale & Retail Trade	42, 44, 45	175 to 249	132 to 187	3 to 4.
6	Finance, Insurance & Real Estate	52, 53	5 to 7	2 to 3	0.
7	Services (Hotels, Personal, Automotive, Repair, Motion Pictures, & Recreation).	71, 72, 512, 514, 811, 812.	221 to 314	183 to 260	2 to 3.
8	Services (Health, Legal, Social, Museums/Gardens, Membership Organizations & Engineering Mgt.).	54, 55, 561, 61, 62, 813, 814.	90 to 128	38 to 54	0.
9	Public Administration, Environment & Not Elsewhere Classified.	92	200 to 284	85 to 121	4 to 6.
	Non-duplicative column totals** =		800 to 1,136	623 to 885	22 to 31.
	Non-duplicative total for three waste unit types =		866 to 1,133 facilities		

**Explanatory Notes:**

- (a) SIC = “Standard Industrial Classification” system.
- (b) NAICS = “North American Industry Classification System”, adopted by the U.S. Federal Government in 1997, replacing the SIC code system (for SIC/NAICS conversion tables see <http://www.census.gov/epcd/www/naics.html>).
- (c) \* Only above-ground hazardous waste tanks are potentially eligible, not in-ground or underground tanks.
- (d) \*\* Some facilities report multiple SIC and NAICS codes for their operations to the EPA; consequently both the facility and unit total counts in this table exceed the non-duplicative total numbers of facilities shown in the bottom row above.

**2. What Is Being Finalized in Today’s Rule?**

We are finalizing revisions to the hazardous waste permitting program to

allow for issuance of a RCRA standardized permit for RCRA TSDs that

<sup>1</sup> The Agency also took comment on other permitting related topics, including how facilities

can satisfy corrective action through alternate cleanup programs, and issues related to financial

assurance. The Agency is deferring action on those portions of the proposal.

are otherwise subject to RCRA permitting and that generate hazardous waste, and then store and/or non-thermally treat that waste on-site in tanks, containers, and/or containment buildings. The standardized permit will also be available to facilities that receive hazardous waste generated from off-site, as long as the off-site generator that sends the waste is under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings. Throughout the remainder of this preamble, the term "manage" and "management" will be used to mean storage or non-thermal treatment, unless otherwise noted. The specific provisions being finalized in today's rule are discussed in Sections III, IV, and V of this preamble. In this final rule, some changes have been made from what was proposed. Some of those changes include: Requiring the submission of the closure plan with the Notice of Intent, rather than 180 days prior to closure; adding a third category for making changes to permits (modifications); allowing for a 180-day extension to completing closure; and allowing a 30-day extension for agency review of the Notice of Intent materials. We are also requiring that off-site facilities, that are eligible for the standardized permit, must submit a waste analysis plan with their Notice of Intent.

#### C. What Is a Standardized Permit?

A standardized permit is a special kind of permit that would be available for certain facilities that manage hazardous waste in tanks, containers, and containment buildings. The permit consists of two parts: A uniform portion included in all cases, and a supplemental portion included at EPA's or the State permitting authority's discretion. (See Section I.C.1 of the proposed rule at 66 FR 52195 for a more detailed discussion regarding the two parts of the permit.) The part 267 requirements being finalized today provide the basis for the uniform portion of the permit. The supplemental portion includes additional provisions deemed necessary to be protective of human health and the environment, including any corrective action, and would be based on site-specific factors at the facility.

#### D. Who Is Eligible for a Standardized Permit?

Throughout this preamble, we use the terms on-site and off-site in reference to facilities managing hazardous waste. When we use the term off-site, we use it to help describe where the waste is

being managed. For example, if facility "A" generates a waste and then sends the waste to facility "B" for treatment, storage or disposal, the waste is being managed off-site. In the final rule, two types of facilities will be eligible for a standardized permit. To be eligible, a facility must:

- (1) Generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings, or
- (2) Receive hazardous waste generated from off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

In the proposed rule, we limited the applicability of the standardized permit to those facilities that manage hazardous waste on-site. However, we also requested comment on whether we should extend eligibility to facilities managing wastes generated off-site (commercials, recyclers, and captives). A number of commenters argued that we should extend eligibility to off-site facilities suggesting that commercial facilities are better prepared and equipped to conduct waste storage (since they were specifically in the hazardous waste management business), that the rule would provide flexibility for facilities in accepting a variety of waste streams, and would benefit facilities and States by reducing costs.

On the other hand, other commenters, particularly States, believed that the standardized permit should be limited to facilities that generate and manage hazardous waste on-site and not be extended to off-site facilities. Commenters argued that such off-site facilities are often more complex and may in some cases pose a greater potential for harm to the environment. Other concerns were also raised, including that off-site facilities might not have adequate knowledge of the wastes they receive, that off-site facilities may potentially accept a wide variety of incompatible wastes, and that inadequate waste analysis could be a problem for off-site facilities. As such, these commenters argued that direct review of the permit application (*i.e.*, the material normally submitted as part of a Part B application) by the permitting authority was an essential step in permitting off-site facilities.

A number of commenters noted that some facilities accept waste from off-site locations of the same company for centralized management of their wastes, and argued that these facilities would be appropriate candidates for a standardized permit. For example, one commenter suggested these types of

facilities could be granted a standardized permit on a case-by-case basis, depending on complexity of their processes and waste streams.

Another commenter noted that extending the standardized permit to centralized facilities would allow a company with multiple manufacturing locations to centralize its management of hazardous waste at a single location without being denied the tangible benefits of streamlined permitting proposed in the Standardized Permitting Rule. Since the company would only be managing its own waste generated from its own operations, the company could reasonably be expected to know the chemical make-up and compatibility of the different incoming waste streams. Moreover, companies have procedures in place to assure that off-site waste streams are properly stored and/or treated at centralized locations.

Another commenter noted that managing wastes at these facilities (centralized facilities) should not be more complicated or require greater attention than managing wastes generated on-site because " \* \* \* a company managing only its own waste generated at several locations \* \* \* should know what specific wastes are generated by the company and be able to manage them properly at a centralized location."

Still another commenter noted problems with off-site facilities in general, but also noted that it would expect that fewer problems would result from allowing off-site facilities who manage only their own wastes generated at different locations to be eligible for the standardized permit because of the familiarity of the company with the composition and character of its own wastes.

Another commenter argued that multiple sources of waste generated by the same company and managed in a consolidated fashion at a treatment/storage (T/S) facility owned and operated by that company (a captive facility as opposed to a commercial one) should still be eligible for the standardized permit. Captive facilities have greater control over the waste generation process and therefore the characteristics of the waste to be managed at the T/S facility.

In response to comments on the proposal, the Agency has been persuaded by the commenters who argued that facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or

containment buildings should be eligible for the standardized permit. Therefore, the final rule expands the eligibility so that a facility with a standardized permit can also receive waste generated at another location that is under the same ownership as the receiving facility. For example, waste from one company could be sent to the standardized permit facility owned by that company. This would also apply to wholly owned subsidiaries, for example where a national corporation had wholly owned subsidiaries separately incorporated in different States. As long as the corporate ownership was the same, and the same corporate entity had ultimate oversight and responsibility, off-site management under the standardized permit would be allowed. EPA anticipates that this change will broaden the benefits of this rule to operations under the same entity. To use this flexibility, the Notice of Intent must include documentation that the off-site facility is under the same ownership as the facility seeking the standardized permit. In addition, to receive wastes from off-site, facilities must also submit a waste analysis plan with the Notice of Intent. We discuss the need for waste analysis plans later in the preamble in Section IV.C.4.

With respect to federal facilities, this rule would allow the transfer of waste between sites under the jurisdiction, custody, or control of the same federal agency. For instance, today's rule would, for instance, allow waste from one Department of Defense installation to go to another such installation because the Department has overall responsibility for the waste. The Department of Energy's comments on the proposal suggested allowing for consolidation of waste from multiple facilities within the DOE complex at a regional facility with a standardized permit. This expansion of the eligibility would allow for this consolidation.

EPA did not, however, extend the applicability to wastes that were not generated by the same entity. While we are extending eligibility to a limited subset of off-site facilities, we are not extending eligibility for the standardized permit rule to all off-site facilities.

One commenter noted that "As the number of waste streams increases so does the complexity of identification and handling. As a commercial TSD a large portion of our infrastructure is devoted to waste identification, verification analysis to ensure proper disposal. This follows detailed procedures. The 'physical' aspects such as handling, storage or treatment are minor compared to the identification,

tracking and documentation aspects of waste handling. It is difficult to conceive how the EPA could allow this kind of activity to be conducted without prior review of appropriate procedures."

Another commenter noted that "In general, facilities that treat or store waste generated off-site should not be allowed to get a standardized permit. Most of the facilities which accept off-site wastes are commercial facilities that accept many of the waste codes listed in 40 CFR part 261. This creates the need for a fairly in-depth waste analysis plan which would be hard to review within the 120-day limit."

Because of the potential variation in types of wastes managed at off-site facilities in general, and the length of time necessary to review waste analysis plans associated with such facilities, we believe it appropriate to limit applicability of the standardized permit rule to those facilities receiving wastes from generators under the same ownership as the receiving facility.

Commenters expressed concerns about the complexity of operations on many "non-captive" and commercial facilities, the large number of wastes that may come in to the sites from many different locations and the environmental problems they've encountered. Commenters believed such facilities needed closer scrutiny to ensure they are operating in a safe manner, and would be better served by operating under an individual RCRA permit. In considering all the comments, and in attempting to balance the streamlined permitting that would be gained from the rule against the possible risk to human health and the environment, we have decided to allow the following types of facilities to be eligible for the standardized permit: (1) Facilities that manage their hazardous waste on-site in tanks, containers, and containment buildings and (2) facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. The response to comments document on this final rule provides additional discussion on this topic.

It should also be noted that the Agency is exploring whether to extend eligibility for the standardized permit to other off-site facilities that have demonstrated superior environmental performance; the National Performance Track Program provides an example of the kind of criteria/facilities that EPA is

considering in this context.<sup>2</sup> We believe it may be appropriate to offer this option to such facilities to further encourage superior environmental results. In fact, the Agency believes it important to reward companies that are top environmental performers and therefore, believe that such a change may be appropriate. The Agency anticipates issuing a proposed rulemaking involving Performance Track facilities in the near future.

An additional situation involves facilities that manage hazardous wastes in units eligible for the standardized permit, and also manage hazardous wastes in other types of waste management units. In our proposal, we solicited comment on whether a facility that manages some of its hazardous waste in on-site storage and/or non-thermal treatment units and some of its hazardous waste in other types of waste management units should be eligible for a standardized permit for their storage and/or non-thermal treatment activities. Several commenters agreed that on-site storage should be eligible for the standardized permit, even if the facility has other permitted operations on-site. Other commenters, however, did not support this measure, noting that having two regimes of RCRA permitting at the same facility would complicate matters. In this final rule, we are allowing facilities to have both a standardized permit for their eligible units, and an individual permit for their other regulated waste management activities because we believe there is a benefit in terms of permit streamlining for those eligible units. Some facilities may have a significant portion of their operations devoted to standardized permit-eligible storage and/or non-thermal treatment activities, which may make a dual permitting scenario worthwhile. Moreover, if a facility believes that having two RCRA permitting schemes at their plant would complicate matters, they need not apply for a standardized permit.

Therefore, the final rule will allow facilities with regular RCRA permits to apply for a standardized permit for their storage and non-thermal treatment operations occurring in eligible units. Such facilities could then have an individual permit for some of their operations, and a standardized permit for their eligible units. However, the

<sup>2</sup> The National Environmental Performance Track program recognizes and encourages top environmental performance among private and public facilities in the United States. Performance Track members go beyond compliance with regulatory requirements to achieve environmental excellence. Currently the program has approximately 300 members.

Director has the final decision on whether a facility will be allowed to operate with dual permits, based on facility-specific factors.

One commenter urged the Agency to be clearer in the final rule that the standardized permit rule will not require generators, already exempt from permitting in certain circumstances under § 262.34, to obtain permits. This rulemaking does not modify the provisions applicable to generators managing wastes within the time limits and conditions of § 262.34. It applies only to activities of RCRA TSDs that are otherwise subject to permitting (and who generate and then store or treat waste on-site in containers, tanks, or containment buildings, or facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings). We have revised the regulatory language and the preamble to make this point clear.

#### *E. Other General Comments on the Standardized Permit Rule*

We believe the standardized permit should result in time and resource savings in the overall permitting process. While owners/operators of such facilities will be required to gather nearly the same information that an individual permit applicant must gather, such information (e.g., Part B application) will only need to be kept at the facility, or other location designated by the Director, as opposed to submitting it to the permitting authority. In fact, several commenters mentioned that the standardized permit would provide a less cumbersome approach for such storage units, than would the individual RCRA permitting process. Specifically noted was the provision that fewer documents would need to be submitted in the application phase, which should save time during the application review phase. We believe that because the standardized permit process would involve review of fewer materials, permits could be issued in less time than with the typical Part B permitting process.

Some commenters argued that the standardized permit process does not facilitate public involvement, because the technical parts of the application will not be circulated as is the case with the individual permitting process, or because the public might not feel comfortable going to the facility to review information. We believe the public will have ample opportunity to be involved, both with the pre-application meeting, and during the

public comment period after the draft permit is public noticed. It should also be noted that the Director has the discretion to establish an information repository that contains the permit information at a location off-site from the facility, if such a location will better foster public participation. To the extent that the public has concerns with the uniform portion of the permit being fully protective because of unique facility circumstances, the public can request that these concerns be addressed in the supplemental portion of the permit. Nevertheless, the facility would still be subject to similar management standards and thus, would still be fully protective of human health and the environment.

Other commenters argued that the standardized permit process could result in unsafe waste storage practices, because not all the technical information about the facility processes would be reviewed prior to permit issuance. We disagree with these commenters. We believe the regulations in today's rule provide the mechanisms necessary to ensure safe waste management even without requiring the up-front submission of all of the technical information about the facility processes.

The units eligible for the standardized permit (tanks, containers, and containment buildings) are relatively straightforward technologies, with straightforward permitting requirements, and, as we discuss in the proposed rule preamble (66 FR 52196), are relatively simple to design and properly construct. The engineering and construction knowledge and skills necessary to design and construct these units are relatively basic. These units are in common usage in many applications and are frequently bought "off-the-shelf" or built from "off-the-shelf" designs. Industry associations and standards organizations have developed standards for these units that are in widespread use. Past experience with these units indicates that they are simpler to design, construct, and manage than units such as combustion units or land disposal units. Storage and non-thermal treatment of waste in these types of units is generally less complicated than thermal treatment of waste (e.g., combustion of hazardous waste in incinerators, boilers, or industrial furnaces) or disposal of waste (e.g., landfilling). It is easier to control risks at these simpler storage and treatment units. We believe that the streamlined standardized permit allows adequate interaction and oversight by the regulating agency and would provide sufficient technical controls to

protect human health and the environment. Furthermore, the permitting requirements in part 267 largely reflect the existing part 264 requirements, which are protective of human health and the environment. For example, part 267 includes unit specific requirements for how waste management units are operated and maintained (e.g., secondary containment, response to spills, condition of units, etc.). Part 267 also includes corrective action and financial responsibility requirements. Today's rule also provides for public comment and review on the draft permit prior to final permit issuance, as well as a mechanism for public involvement prior to the submission of the Notice of Intent. In addition, even though this information will not be required to be submitted as part of the Notice of Intent, the information must be retained at the facility, and be made available for the Director/Permitting authority to review, should any questions remain about whether a standardized or individual permit should be issued, or whether additional site-specific conditions are necessary. Finally, the Director retains the ability to impose any site-specific conditions, in the supplemental portion of the permit, necessary to protect human health and the environment. Thus, the standardized permit process, while it will likely speed up the process of issuing permits for eligible facilities that store or non-thermally treat waste in tanks, containers, or containment buildings, will do so in a manner that would still provide full protection of human health and the environment.

One commenter requested clarification that the standardized permit could apply to mixed wastes. The standardized permit rule could in fact apply to the management of mixed waste, presuming the other regulatory conditions were met.

Finally, one commenter noted that the standardized permit process would limit the regulatory authority's ability to determine compliance with the waste analysis and closure plans. We agree with the commenter, at least with respect to the closure plan, and in part to the waste analysis plan. The rule has been modified to require facilities to submit a closure plan with the Notice of Intent. Requiring the plan up front would allow the regulatory authority to review the plan, and would also allow the public to review the plan during the public comment period for the publicly noticed permit. The closure plan would become part of the permit at final permit issuance. The rule also has been modified to require submission of the waste analysis plan for facilities that are

applying to manage waste that were generated off-site.

Due to the streamlined nature of the standardized permit process, we believe that facilities conducting routine storage and treatment on-site have good knowledge of the characteristics of the waste they generate and manage and should be able to safely operate within a self-certification of compliance process, while maintaining the extensive information, normally submitted with a Part B application, on-site. Furthermore, 40 CFR 267.13 provides a detailed account of the waste analysis plan requirements, which when combined with an audit and compliance certification should be sufficient to ensure compliance. However, facilities that receive waste from off-site will be required to submit a waste analysis plan and maintain a copy of the waste analysis plan on-site. Although we generally believe that common ownership between the generating and receiving facilities means that the receiving facility could reasonably be expected to have a greater familiarity with the characteristics of the wastes generated from off-site than other off-site facilities, such facilities will still likely have less knowledge/familiarity than the waste generator. Consequently, the Agency believes that the additional safeguard provided by submission of the waste analysis plan is necessary to reduce any uncertainties regarding extension of the standardized permit to such facilities, and to allow the regulatory authority an adequate opportunity to determine whether management procedures are adequately protective, or whether additional, site-specific conditions are warranted.

**F. Should a Standard Form Be Developed for Preparing the Required "Part B" Information?**

We requested comment in the proposal on whether we should develop a "fill-in-the-blank" type form that facilities could use as a tool to help prepare the information required to be maintained at the facility. A number of commenters supported the development of a "fill in the blank" type of form. Therefore, we are currently looking into the feasibility of developing a form that can be used to assist permit applicants gather the required information that must be maintained at the facility to support a standardized permit. If and when a form is developed, it will be available from EPA on OSW's hazardous waste permitting Web site at: <http://www.epa.gov/epaoswer/hazwaste/permit/index.htm>.

**G. Should the Current Provisions for Final Issuance of an Individual Permit Apply to Standardized Permits?**

As proposed, the provisions for final issuance of the standardized permit are set forth in § 124.205, and are the same as the current procedures for final issuance of an individual permit, codified in § 124.15. We did not receive any significant comment on this question, and believe that the current provisions for final permit issuance are appropriate for issuing standardized permits. Therefore, we are finalizing § 124.205, as proposed.

**III. Section by Section Analysis and Response to Comments for the 40 CFR Part 124 Requirements Related to the Standardized Permit Rule**

**A. Applying for a Standardized Permit**

This section discusses the overall process of how owners and/or operators apply for and obtain a standardized permit. For clarification, the application for a standardized permit is known as a "Notice of Intent."

**1. How Do I Apply for a Standardized Permit?**

This part of the preamble discusses the steps involved in applying for a standardized permit which are laid out in 40 CFR part 124 subparts A, B, and G. The steps involve the pre-application meeting with the public followed by the submission of a Notice of Intent and supporting materials. The Notice of Intent and supporting materials, in most cases, should provide sufficient information for the Director to make a draft permit decision. Any lack of information could be a basis for the Director to determine that a facility is ineligible for a standardized permit.

**a. How Do I Conduct a Pre-Application Meeting?**

Today's rule subjects you to the existing requirements of § 124.31, obligating you to advertise and host a meeting with the neighboring community before submitting your Notice of Intent. The meeting with your community is designed to provide an open, flexible, and informal occasion for you and the public to share ideas, educate each other, and start building the framework for a solid working relationship. The meeting discussion should address topics such as: The type of facility, the location, the general processes involved, the types of wastes managed, and planned waste minimization and pollution control measures. The discussions also could include such topics as planned procedures for preventing or responding

to accidents or releases. When you submit your Notice of Intent, you will need to provide a summary of the meeting, including a list of attendees. No major comments were received on this section and we are finalizing § 124.31 as proposed.

The Agency encourages facilities to refer to the RCRA Public Participation Manual (EPA530-R-96-007, September 1996, available at <http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm>) to promote successful and equitable public involvement in RCRA permitting activities.

**b. How Do I Submit a Notice of Intent To Operate Under the Standardized Permit?**

The requirement to submit a Notice of Intent to operate under a standardized permit is laid out in § 124.202, and is consistent with the process and terminology currently used for NPDES general permits. The Notice of Intent is composed of the documents described under § 270.275 and include the RCRA Part A information, the closure plan, the closure cost estimate, documentation of the financial instrument to cover closure, information supporting that you meet the location standards, the pre-application meeting, and materials required under § 270.280 (which include the required certifications and audit report). In addition, facilities that wish to accept waste from off-site, the Notice of Intent must include the waste analysis plan, and documentation that the originating generator and the facility seeking the standardized permit are under the same owner.

While the proposal did not require submission of the closure plan at the time the Notice of Intent was submitted, the final rule does include this requirement. Several commenters argued that the closure plan should be submitted to help assure the regulatory authority of the owner/operator's ability to complete closure, and also that a closure plan would help support closure cost estimate figures. We agree with these commenters and are finalizing the rule to require submittal of the closure plan with the Notice of Intent. See also the discussion in Section IV.G, for additional explanation of EPA's decision to require submission of the closure plan with the Notice of Intent. It should be noted that the closure plan should provide sufficient detail to assure the Director that the facility can close and show how the facility will be closed. Failure to submit sufficient information in the closure plan might be cause for a facility to be considered ineligible for a standardized permit. In addition to the closure plan, a closure

cost estimate must be submitted, as must documentation showing the existence of a financial assurance instrument sufficient to cover closure.

Some commenters also argued that the waste analysis plan should be submitted with the Notice of Intent, and that submitting the plan would help assure the regulatory authority that the owner/operator has adequate knowledge of the waste streams being managed (waste compatibilities, characterization), especially if the rule were extended to include off-site facilities.

We generally believe that on-site facilities have good knowledge of the wastes they are managing, and therefore, we are not requiring that waste analysis plans be submitted with their Notice of Intent. Due to the streamlined nature of the standardized permit process, we believe that facilities conducting routine storage and treatment on-site have good knowledge of the characteristics of the waste they generate and manage, and should be able to safely operate within a self-certification of compliance process, while maintaining the extensive information, normally submitted with a Part B application, on-site. Furthermore, 40 CFR 267.13 provides a detailed account of the waste analysis plan requirements, which when combined with an audit and compliance certification should be sufficient to ensure compliance. In the final rule, we will not require waste analysis plans for such facilities to be submitted, but maintained on-site. However, as noted previously, the Agency is also allowing facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, to also be eligible for the standardized permit. In this situation, the facility will be required to submit the waste analysis plan with the Notice of Intent. As discussed previously, we believe it necessary for the waste analysis plan to be submitted to help ensure that waste management procedures are adequately protective.

You must also certify, as required by § 270.280, that, at the time the Notice of Intent is submitted, that the facility is in compliance with the requirements of part 267, or in the case of a new facility, that the facility will comply with the part 267 requirements when the facility is built and operated. (The proposed rule did not specifically contain a provision to allow the generator to submit the Notice of Intent for new facilities, that are designed, but built later. We believe that such a provision is appropriate and are adding such a provision to the final rule, at § 270.280(a)(1)(ii). In addition to certifying compliance, a compliance

audit must be completed. This audit is a systematic, documented, and objective review of the facility's operations and practices related to meeting environmental requirements, in order to assess the compliance status prior to submitting the Notice of Intent. The audit results must be included in an Audit Report with the compliance certification as supporting documentation to the Notice of Intent.

Regarding compliance audits, several commenters argued that we should not require audits at all, because doing so might unnecessarily burden facilities. Several commenters supported the need for conducting the audit, noting that doing so helped ensure compliance with the regulations and familiarity with facility operations. Other commenters argued that facilities be allowed to perform self-audits, and not be limited to conducting independent, third-party audits. Another commenter, arguing for only third-party audits, believed that some owners or operators of TSDs subject to this rule do not have the expertise to adequately audit their facility's operations. While we appreciate the comments, we believe that compliance audits are an integral part of the standardized permitting process, serving to help ensure that a facility is complying with the applicable requirements. Compliance audits are intended to support the self-certification process, and should not unnecessarily burden facilities. While there may be some owners/operators who lack the expertise to conduct audits we believe it unnecessary to require that only third parties conduct audits, because many facility owners are familiar with, and have the expertise to audit their operations. We did not include specific regulatory provisions detailing how facilities must conduct compliance audits in the final rule, but provided general information and web links to guidance materials for conducting audits. (see Section V.B.3). In addition, the final rule does require that the auditor sign and certify that the audit report is accurate, prior to submitting to the Director with the Notice of Intent, which provides an additional safeguard.

Another commenter said the proposal was not clear on how existing facilities would comply with the part 267 standards if a permit is issued. In the RCRA permit program, terms of how a facility will comply with the permit, once a permit is issued, are specified in the permit. This will continue to be the case for standardized permits—the uniform portion of the permit will contain the requirements as specified by part 267, and the supplemental portion

will provide site specific standards, as needed.

Another commenter argued that the Notice of Intent and supporting documents submission will potentially strain RCRA enforcement resources, as focus is directed to confirm the adequacy of audits and certifications provided by the permit applicant. While it is foreseeable that some additional effort will likely be placed on the Agency's enforcement resources, we believe that the units eligible for a standardized permit involve rather straightforward conditions.

## 2. How Do I Switch From an Individual Permit to a Standardized Permit?

Switching from an individual permit to a standardized permit could involve a few scenarios. In general, and the most likely case, is where a facility's units are all eligible for the standardized permit. In this case, you could request the Director of the regulatory agency to revoke your individual permit and issue a standardized permit. For facilities where only some of the units are eligible for a standardized permit, you could request the Director to modify the original permit to no longer include those units, and issue a standardized permit for those units. The revocation and reissuance procedures are in § 124.203, as allowed by § 270.41, and are finalized as proposed.

One commenter, while supportive of allowing facilities to switch to a standardized permit for eligible activities while keeping other activities under an individual permit, believed that revocation and reissuance should not be the required procedure to accomplish this. The commenter suggested that the facility should only need to submit a Notice of Intent for the standardized permit operations and, in addition, a conforming modification to the existing permit. We agree with the commenter that submission of the Notice of Intent along with a modification can work in many instances (modification, revocation, and reissuance procedures appear in today's rule at § 124.5). Another commenter argued that a newly permitted facility should not be able to have their permit revoked, and a standardized permit issued, until the term of the existing permit comes to an end. Otherwise, allowing the revocation might be overly burdensome to states. While we agree that there may be some instances where switching to a standardized permit may be challenging to States, we also do not want to burden facilities who are eligible for a standardized permit. In any event, States, who for the most part implement the permitting program, will

decide at what point they will allow facilities to switch from the individual permit to the standardized permit.

#### *B. Issuing a Standardized Permit*

##### 1. How Would You as the Regulatory Agency Prepare a Draft Standardized Permit?

Under the final rule, three steps are involved in preparing a draft permit. Step one is for you (as the regulatory agency) to review the Notice of Intent and supporting information and determine if the facility is eligible for a standardized permit. Second, you would tentatively decide whether to grant or deny coverage under the standardized permit. If a decision is made to grant coverage, the draft standardized permit would propose appropriate terms and conditions, if any, to include in the supplemental portion of the permit. Lastly, you would prepare your draft permit decision within 120 days after receiving the Notice of Intent and supporting information. If necessary, a one-time 30-day extension is permitted for review of the information, and preparation of the draft permit. Such extensions might be appropriate in cases involving site specific situations requiring more review. We received comments regarding time periods for an extension, from no extension to 180 days. We have decided to limit the extension to 30 days since we believe that due to the nature of the types of units that are eligible for the standardized permit—containers, tanks, and containment buildings, that a one-time 30 day extension should be all that is necessary.

##### a. Drafting Terms and Conditions for the Supplemental Portion

As noted previously, the supplemental portion of the standardized permit would include any additional provisions that are deemed necessary to protect human health and the environment and would be issued based on the regulatory agency's specific determination of the conditions at the particular facility. If you, as the Director of the regulatory agency, decide to grant coverage under the standardized permit, you must determine whether supplemental conditions are appropriate or necessary and if so, tentatively identify appropriate facility-specific conditions to impose in the supplemental portion of the standardized permit, and include those conditions as part of the draft permit. These proposed facility-specific conditions would go beyond the standard conditions in the uniform

portion of the standardized permit. (The uniform portion of the permit includes standards based on the applicable part 267 requirements.) The supplemental terms and conditions would be those you deem necessary for corrective action purposes, or to ensure protection of human health and the environment. We expect that the need to have supplemental conditions, beyond corrective action requirements, will not be a common occurrence. The authority to impose corrective action conditions is found in RCRA section 3004(u) and (v), as well as EPA's implementing regulations at 40 CFR 267.101, and authority to impose conditions for protection of human health and the environment is found at RCRA section 3005(c)(3), as well as EPA's implementing regulations at 40 CFR 270.32(b)(2).

One commenter noted that it was unclear how the regulatory authority would obtain site-specific information in developing permit conditions. It should be noted that § 270.10(k) allows the Director to require the submission of such information as necessary to establish permit conditions. In addition, information from the public meeting and inspections could be the basis to help develop permit conditions, as appropriate.

Another commenter supported the idea suggested in the preamble that a facility owner or operator should be allowed to "suggest supplemental conditions that he/she would like the responsible regulatory agency to attach to the standardized permit," and suggested regulatory language to specifically allow that provision. While we certainly support allowing facilities to submit suggested conditions, we do not believe it necessary to specifically include that in the regulations, as it could confuse some permit applicants about what is actually required. If a particular owner/operator wants to suggest that supplemental conditions be included in their standardized permit, they are free to do so in the Notice of Intent.

##### b. Denying Coverage Under the Standardized Permit

The provisions of § 124.206 for denying coverage under a standardized permit are finalized as proposed. Specifically, under the final rule, the Director could tentatively deny a facility coverage under the standardized permit. Reasons for denial could include failure of the facility owner or operator to submit all the information required under § 270.275, or that the facility does not meet the eligibility requirements for a standardized permit (that is, the

facility's activities are outside the scope of the permit). The Director could also deny coverage based on a facility's compliance history (see § 124.204(b)).

Instances of poor compliance history exists where previous violations by a facility establish a pattern of disregard of environmental requirements under RCRA or other environmental statutes. Some of the factors used to evaluate a facility's compliance history may include:

- Number of previous violations
- Seriousness of previous violations
- The facility's response with regard to correction of the problem (e.g., how quickly the facility achieved compliance)

Consideration of compliance history reflects the self-implementing nature of the requirements that are being imposed under the uniform portion of the standardized permit. A facility with a demonstrated history of non-compliance may not be a viable candidate for a standardized permit. Beyond these points, we believe it is difficult to develop specific criteria defining "poor" compliance history. We believe that the permitting authority is in the best position to determine whether or not a facility has a compliance history that is so poor as to determine that they should be ineligible for a standardized permit.

A number of commenters believe that the regulations should be clearer on the criteria for denying coverage under the standardized permit, and offered suggested situations that could weigh heavily in deciding whether or not to deny a facility from receiving a standardized permit. Among the reasons suggested for denial included a facility's demonstrated history of non-compliance with regulations or permit conditions, demonstrated history of submitting incomplete or deficient permit applications, and that the facility does not meet the criteria of eligibility in § 124.201.

The suggested reasons are consistent with our intent to limit the eligibility for the standardized permit to those facilities that can demonstrate, or have demonstrated, an ability to adhere to the regulations, as we discussed in the preamble to the proposed rule (see 66 FR 52203, Section IV.B.2). Section 124.204(b) provides specific eligibility criteria. Under 124.204(b)(2)(iv), you may consider the facility's compliance history, in cases where the facility is operating under RCRA interim status, or has an existing permit and is choosing to convert to a standardized permit. Poor compliance history could indicate a facility that might more appropriately

be served by an individual permit, or, of course, permit denial if warranted.

#### c. Preparing the Draft Permit Decision

Under § 124.204(c), the Director needs to make a draft permit decision within 120 days of receiving the Notice of Intent and supporting information. In addition, we are allowing a one time 30-day extension. The original proposal called for a draft permit decision within 120 days, and requested comment on whether additional time should be allowed. Several commenters agreed with the proposal that 120 days is sufficient time to review the information submitted with the Notice of Intent. However, other commenters have argued that the initial 120-day period would not be adequate time to review all the information submitted and conduct the required public comment period. Suggested extensions ranged from those who suggested no extension, all the way up to 180 days suggested by one commenter. We understand that some states have additional requirements that permit applicants must meet, that may necessitate an extension. However, we believe that most submissions should be reviewable in the 120-day time frame. Furthermore, under the standardized permit rule, the public comment period begins once the draft permit is public noticed, and is not part of the 120-day review period.

Nevertheless, there may be situations where additional time is needed, for example, to work out a particular approach to an issue requiring a supplemental condition. For these facilities, and in response to comments, the Agency is providing a one-time extension of 30 days. We believe that the 120-day initial time period, with a one time 30-day extension will provide sufficient time to issue a draft permit (or permit denial).

#### 2. How Does the Regulatory Agency Prepare a Final Standardized Permit?

After the close of the public comment period, the Director would make a final determination on the draft permit decision (*i.e.*, whether to grant or deny coverage for a facility to operate under the standardized permit). The Director would use the same procedures to finalize a draft standardized permit as he or she would use to finalize a draft individual permit, found in § 124.15. Commenters supported this provision of the rule; therefore, § 124.205 for preparing a final permit decision is finalized, as proposed.

#### C. Public Involvement in the Standardized Permit Process

Public involvement begins early in the standardized permitting process, starting with the public meeting that must occur prior to submission of the Notice of Intent. This meeting is described in more detail in preamble section III.A.1.a.

##### 1. Requirements for Public Notices

The provisions of § 124.207 require the Director to issue a public notice announcing the draft permit decision. The procedures and time periods for public comment are the same as for commenting on draft individual permits. Because we received no significant comment, we are finalizing § 124.207 as proposed.

##### 2. Opportunities for Public Comments and Hearings

The provisions for the comment period and hearings are found in § 124.208. Because we received no significant comment, we are finalizing § 124.208 as proposed.

##### 3. Responding to Comments

The requirements for responding to comments are found in § 124.209. Because we received no significant comment, we are finalizing § 124.209 as proposed.

##### 4. Appealing a Final Permit Decision

Under today's final rule, according to § 124.210, you may appeal the final permit decision to the Environmental Appeals Board within 30 days. You may appeal the permit, including any terms and conditions in the supplemental portion, but only after the final determination is made. At that time, you may also appeal the eligibility of the facility for the standardized permit. (For example, you may challenge whether a unit is a tank.) You may not appeal the terms and conditions of the uniform portion of the standardized permit.

One commenter noted that appealing the supplemental portion of the permit might call into question whether the facility can still operate safely under the unappealed portion of the permit. Just as occurs in the current regulatory process, if an appealed section of the permit is required for safe management of hazardous waste in that unit, then waste cannot be managed in the unit until the appeal has been adjudicated. See 40 CFR 124.16(a). For a standardized permit, if the supplemental portion of the permit is necessary for safe waste management, and that part of the permit is appealed, then waste may not be managed in the unit until the appeal is resolved.

However, if the appealed supplemental portion of the permit deals with SWMU corrective action issues, then safe waste management in the eligible units can likely occur. More directly stated, if the appealed parts of the permit are unrelated to the units eligible for the standardized permit, then safe waste management in those eligible units can likely occur.

#### D. Maintaining a Standardized Permit

This portion of the preamble discusses what is being finalized today regarding how your standardized permit is modified over time to reflect changes in the facility's design or operations. While the rule provides a mechanism for making changes to standardized permits, we envision that few changes to the actual permit would likely be necessary. This is because standardized permits contain standard conditions based on the requirements of Part 267, and that many changes at the facility would only affect the information kept on-site and not the actual permit. The only thing that would have to be modified, typically, would be supplemental conditions that are unique to the facility. However, when changes to the standardized permit are necessary, they will fall into the categories described below.

##### 1. What Types of Changes Could Owners or Operators Make?

The proposed rule set forth two categories of modifications, routine and significant, for making changes to standardized permits. Routine changes included those changes that, under an individual permit situation, would be classified as either a class 1 or class 2 modification under § 270.42 appendix I, while significant changes included those changes that would have been class 3 modifications. The final rule modifies the routine changes category originally proposed, and adds a third category, routine changes requiring prior approval. The actual procedures for performing routine and significant changes are finalized, as proposed; the only change made is to allow routine changes requiring prior agency approval, as described below.

Several commenters argued that some class 2 modifications are more like class 3 modifications, and should not be considered as routine changes under a standardized permit, but as significant changes. Furthermore, because some class 1 modifications require prior approval under an individual permit, those changes should be treated similarly under a standardized permit. For example, several commenters noted that changes in ownership should not

simply be a routine change under the standardized permit rule, but should require prior approval from the regulatory agency, because of financial assurance and compliance history concerns about a new owner.

Under the original proposed rule, "routine changes" encompassed both class 1 and class 2 modifications, leaving class 3 modifications to be addressed as "significant changes." We agree with commenters to the extent that some changes to standardized permits should require prior approval, especially changes that would require prior approval under individual permitting.

Therefore, the final rule adds a third category of changes to permits, "routine changes with prior approval." (See the next section for a description of the types of modifications that would fall into the various categories.) The addition of another category between "routine" and "significant" should help address the concern that some class 2 modifications are more like class 3 modifications and should be treated as significant changes, because now all class 2 modifications will require prior approval under the standardized permit. Rather than class 2 modifications being a "routine change" as described in the proposed rule, class 2 modifications will now require prior approval, as will class 1 modifications normally requiring prior approval.

While we are adding a third category, the overall permit change process is more streamlined than the existing modification process. The new category—"routine with prior approval"—would not involve a public comment or hearing process, as would be the case with regular class 2 modifications, but would require a notification to, and acknowledgment and approval from the regulatory authority, and also, within 90 calendar days of the approval, notification to the facility's mailing list. The Director would need to respond within 90 days of receiving the modification request, either approving or denying the request.

## 2. What Are the Definitions of Routine Changes, Routine Changes With Prior Agency Approval, and Significant Changes, and What Are the Requirements for Making Those Changes?

### a. Routine Changes

Routine changes are any changes that qualify as a class 1 modification under 40 CFR 270.42 Appendix I that do not require prior approval by the regulatory authority. The requirements for making routine changes are found at § 124.212.

The procedures for making routine changes are described in the preamble of the proposed rule at 66 FR 52206 (Section VI.C). Basically, these procedures allow routine changes to be made without notifying the regulatory authority, as long as those changes do not amend any of the information that was originally submitted under § 270.275 during the standardized permit application process. If the change amends the information provided under § 270.275, then the revised information must be provided to the Director, the facility mailing list, and to state and local governments, as described in § 124.212(b)(1) and (2).

### b. Routine Changes With Prior Agency Approval

Routine changes with prior agency approval are changes that, according to 40 CFR 270.42 Appendix I, either qualify as class 1 modifications requiring prior agency approval, or as class 2 modifications. The requirements for making routine changes with prior agency approval are found at § 124.213. The procedures for making changes with prior approval include the same steps that must be followed for making changes that amend the information submitted under § 270.275 (see § 124.212(b)(1) and (2)), and also require approval from the Director.

### c. Significant Changes

Significant changes are any changes that qualify as: (1) Class 3 permit modifications under 40 CFR 270.42 Appendix I, (2) any changes not specifically identified in Appendix I, or (3) any changes that amend the terms or conditions in the supplemental portion of the standardized permit. The requirements for making significant changes are found at § 124.214. The procedures for making significant changes to the standardized permit are very similar to the initial standardized permitting process, and is described in the preamble of the proposed rule at 66 FR 52206 (Section VI.D), and are finalized, as proposed.

## 3. How Do I Renew a Standardized Permit?

The process to renew a standardized permit is the same as for renewing an individual permit. See §§ 270.11(h) and 270.30(b). To renew a standardized permit, you would follow the same procedures as you would to initially obtain coverage under the standardized permit (those in 40 CFR part 124 subpart G). We did not receive any significant comment regarding the process of renewing a standardized

permit, and therefore, are finalizing this section, as proposed.

## IV. Section by Section Analysis and Response to Comments for the Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit

### A. Overview

Most of the proposed part 267 requirements have been finalized, as proposed, with few exceptions, which are discussed later in this section. The requirements in part 267 form the basis for the uniform portion of the standardized permit, which is a required part of all standardized permits.

Some commenters argued that the standardized permit rule only adds another set of regulations, and thus, adds to the difficulty of keeping track of the various permits. We acknowledge this rule does add another set of regulations to the CFR. However, these regulations replace the existing technical regulations (part 264) that already apply to tanks, containers, and containment buildings, which these facilities are already subject to. Thus, we would disagree with the commenter that all we are doing is subjecting these units to additional regulation. Moreover, as stated previously, we believe that this rule will help streamline the permitting process, saving time and resources for both the facility and the regulatory agency, while maintaining protection of human health and the environment.

### B. Subpart A—General

#### 1. Purpose, Scope, and Applicability

The final rule sets forth the minimum national standards for facilities managing wastes under a standardized permit. The final part 267 standards apply to owners and operators who store or non-thermally treat their wastes on-site in tanks, containers, and containment buildings, and to facilities that manage wastes generated off-site, by a generator under the same ownership as the receiving facility. Based on comments, there appeared to be some confusion on whether facilities with thermal treatment units could apply for a standardized permit for their eligible units in which non-thermal treatment or storage is being conducted. A facility may apply for a standardized permit for its eligible units, regardless of what other hazardous waste management is occurring at the facility. For example, a hazardous waste incineration facility that conducts tank storage for wastes generated on site may apply for a standardized permit for the tank storage. Except for a clarifying

correction to the part 270 reference (subpart J rather than subpart I), the language of § 267.1 is finalized, as proposed.

## 2. Relationship to Interim Status Standards

The final § 267.2 provisions are similar to the § 264.3 provisions. If you are currently complying with the requirements for interim status, you will need to continue to comply with the interim status standards specified in part 265 until final disposition of your standardized permit application. We received no significant comments on this section. Thus, the § 267.2 requirements are finalized, as proposed.

## 3. Imminent Hazard Action

The final § 267.3 provisions repeats the current § 264.4 provisions concerning imminent and substantial hazards. We received no significant comments on this section, and therefore, are finalizing these provisions, as proposed.

## C. Subpart B—General Facility Standards

These standards are similar to the general facility standards currently found in 40 CFR part 264 subpart B. These standards describe how to obtain an EPA identification number, requirements for waste analysis, security requirements, inspection schedules, employee training, managing ignitable, reactive or incompatible wastes, and location standards.

### 1. Applicability

The applicability language in § 267.10 is finalized, as proposed, except for the change in the reference to subpart I to subpart J, of part 267. The reason for this change is editorial. No significant comments were received on this section. The purpose of part 267 is to establish minimum national standards for facilities managing waste under a standardized permit, and as such would apply to owners and operators of facilities who non-thermally treat and/or store hazardous waste on-site in tanks, containers, and/or containment buildings, as well as facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility and who store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

### 2. How Do I Comply With This Subpart?

Section 267.11 lists the steps you need to take if the subpart applies to you. Specifically, you would obtain an EPA identification number, and follow

prescribed requirements for waste analysis, security, inspections, training, special waste handling and location standards. We are finalizing § 267.11, as proposed, because no substantive comments were received on this section.

### 3. How Do I Obtain an EPA Identification Number?

Section 267.12 generally repeats the requirement currently in § 264.11 with the addition of whom to contact for information. No significant comments were received on this section, and thus, we are finalizing this provision, as proposed.

### 4. What Are the Waste Analysis Requirements?

The provisions of § 267.13 are finalized and include a change related to eligible off-site facilities. These provisions generally require owners and operators to prepare a waste analysis plan and keep it on-site at their facility. Eligible facilities that receive wastes generated off-site must submit a waste analysis plan with their Notice of Intent, as well as retain the plan on-site.

Several commenters expressed the need for submission and approval of waste analysis plans, particularly if the rule was extended to include off-site facilities. Because we are extending the rule to certain off-site facilities, as described previously, we are requiring those facilities to submit a waste analysis plan with the Notice of Intent. Most commenters addressing waste analysis plans supported the idea that on-site facilities would not need to submit waste analysis plans. Therefore, we are not requiring on-site facilities to submit waste analysis plans with the Notice of Intent. (See the discussions of on-site versus off-site in section II.D, and on waste analysis plans in section III.A.1.b of this preamble.)

A number of commenters discussed the importance of waste analysis plans. DOE noted that a key aspect of the acceptability of this approach [extending the rule to eligible offsites] would be the proper design and implementation of waste analysis requirements to ensure the compatibility of wastes from multiple off-site sources that are stored and treated together. For example, at least one DOE site that receives waste from off-site believes it has as much knowledge and confidence in the compatibility of the off-site wastes as it has for waste generated on-site, because of its approach to waste analysis.

DOE also noted that "to verify that acceptable waste analysis requirements are in place at a facility managing waste from off-site, they suggest that EPA

require the facility to submit a waste analysis plan with the Notice of Intent to operate under a standardized permit.

One commenter noted that where a facility has numerous processes contributing hazardous waste to a storage or treatment unit, the waste analysis plan would be significantly more complex. In this case, it may be prudent to submit the waste analysis plan with the initial notification to ensure that waste management procedures are adequately protective.

Based on these comments and the need they expressed to have adequate knowledge of wastes being received from off-site, we are requiring that waste analysis plans be submitted to the regulatory agency with the Notice of Intent. Multiple facilities under the same owner may be in different states, and may have variations in their waste streams. States should have waste analysis information concerning wastes generated in facilities located in other states in deciding whether the facility should receive a standardized permit, and in ensuring that waste analysis at the receiving facility will be sufficient to protect human health and the environment.

### 5. What Are the Security Requirements?

The § 267.14 security provisions are similar to the § 264.14 provisions. The proposal in § 267.14(a) and (b) provided for an exemption from the security provisions by requiring a certification that both of the conditions in § 267.14(a) are met. While several commenters supported the exemption in the proposal, most of the commenters believed that the proposed security provisions are reasonable, and that there is no reason for an exemption from those provisions. If, for example, a facility wants consideration for an exemption due to site-specific conditions, such a facility might likely be a better candidate for an individual permit, than for a standardized permit. Commenters also noted that the conditions for the exemption are rarely met.

Based on the comments submitted and upon reflection of the Agency's overall goal in issuing the standardized permit rule, we believe that having an exemption provision would add to the complexity of what is intended to be a streamlined permit process. If allowed, the exemption would require review and approval stages, adding to the time necessary for issuance of a draft permit. Therefore, the final rule does not include the exemption proposed in § 267.14(a), and the remaining language in § 267.14 has been edited accordingly.

#### 6. What Are the Inspection Schedule Requirements?

The § 267.15 inspection schedule requirements are finalized, as proposed. No significant comments were received on this section.

#### 7. What Are the Training Requirements?

The § 267.16 training requirements are essentially the same as the training standards in § 264.16, and are finalized, as proposed. No significant comments were received on this section. Owners/operators will be required to keep a description of the training program and individual personnel training logs with other required records at their facility.

#### 8. What Are the Requirements for Managing Ignitable, Reactive, or Incompatible Waste?

The general requirements of § 267.17 for managing ignitable, reactive, or incompatible waste are very similar to the requirements found in § 264.17, and are finalized, as proposed. No significant comments were received on this section. These general requirements minimize the potential for accidents when handling ignitable or reactive wastes, or when mixing incompatible wastes.

#### 9. What Are the Location Standards?

The § 267.18 location standards are similar to the requirements found in § 264.18, except that today's final rule does not provide for a waiver from the 100-year floodplain restriction, based on the ability to remove the waste.

Most commenters agreed with the Agency that we should not allow a waiver from the location requirements that prohibit locating a facility in a 100-year floodplain, if wastes can be removed before flood waters reach the facility. Commenters provided similar arguments to those regarding the exemption from the security provisions. Moreover, they argued that if a facility believes, based on site-specific conditions, that they should be eligible for a waiver, that the facility would likely be better suited for an individual permit. We agree with these commenters.

However, some commenters argued that the waiver provision should be available for siting a facility in the 100-year floodplain in order to maximize regulatory relief. We disagree. Similar to our reasons for not having an exemption from the security provisions of § 267.14, we believe that having a waiver from the location standards would only add to the complexity of what is intended to be a streamlined permit process. If allowed, waivers would require review and approval stages, adding to the time

necessary for issuance of a draft permit, which detracts from the intent of permit streamlining. Therefore, we are not providing for a waiver from the floodplain location standards in the final rule.

#### D. Subpart C—Preparedness and Prevention

This subpart requires you as the owner or operator to minimize threats to human health and the environment caused by the release of waste from unplanned events.

##### 1. What Are the Design and Operation Standards?

The requirements of § 267.31 are the same as those found in § 264.31, and include requirements on how to design, construct, maintain and operate your facility to minimize threats to human health and the environment. No significant comments were received on this section. Therefore, we are finalizing the requirements, as proposed.

##### 2. What Equipment Am I Required To Have?

Section 267.32 equipment requirements are finalized, as proposed. This section requires you to have certain equipment at the facility, including an alarm system, communication equipment, fire extinguishers and fire control equipment, and either water at adequate volume and pressure to supply hose streams, foam equipment, or water spray systems. The section also provides an exemption for certain equipment, otherwise required, if the potential hazards at the facility don't warrant the equipment. To make use of that equipment exemption, you would need to submit a certification and keep documentation supporting the exemption at your facility. This exemption has been retained for two reasons: It avoids unnecessary expenditures, and the exemption does not require approval of a demonstration by the permitting agency. However, you would be required to keep documentation supporting any equipment exemption at the facility and you would make the documentation available for review by the permitting agency and the public. No significant comments were received on this section.

##### 3. What Are the Testing and Maintenance Requirements for Equipment?

Section 267.33 is finalized, as proposed, requiring the testing of all equipment identified in § 267.32. No significant comments were received on this section.

#### 4. What Are the Requirements for Access to Communication Equipment or an Alarm System?

Section 267.34 requires all personnel involved in waste handling to have ready access to communication equipment and alarms. The requirement would not apply when the equipment is not required under § 267.32. No significant comments were received on this section. Therefore, this section is finalized, as proposed.

#### 5. What Are the Requirements for Access for Personnel and Equipment During Emergencies?

Section 267.35 is being finalized with additional language as described below. Specifically, a commenter suggested adding the following language to the end of proposed § 267.35: "as appropriate considering the type of waste being stored or treated." We agree with the suggested change because it acknowledges that certain wastes may not necessarily require spill control or fire equipment access to the area.

#### 6. What Are the Requirements for Arrangements With Local Authorities for Emergencies?

Section 267.36, regarding making arrangements with local entities such as police, fire, and response authorities, is finalized, as proposed. No significant comments were received on this section.

#### E. Subpart D—Contingency Plans and Emergency Procedures

This subpart contains standards requiring a contingency plan that describes how hazards to human health and the environment will be minimized. These requirements are similar to those in part 264 subpart D with the exception that you are not required to submit the plan with your application.

The following Sections of subpart D are finalized, as proposed, because no significant comments were received.

- a. Purpose of the Contingency Plan (§ 267.51)
- b. What is Required to be in the Contingency Plan? (§ 267.52)
- c. Who is Required to Have Copies of the Contingency Plan? (§ 267.53)
- c. Revising the Contingency Plan (§ 267.54)
- d. Role of the Emergency Coordinator (§ 267.55)
- e. Emergency Procedures for the Emergency Coordinator (§§ 267.56 and 267.57)

#### F. Subpart E—Manifest System, Record Keeping, Reporting, and Notifying

This subpart of part 267 contains the standardized permit manifest system, record keeping, reporting, and notifying

requirements. We changed the name of the heading for subpart E to reflect the applicability of the manifest system requirements in cases involving eligible off-site facilities.

#### 1. When Would I Need To Manifest My Waste?

Today's rule extends eligibility for the standardized permit to certain off-site facilities. Because the proposal only addressed on-site generator facilities, § 267.70 did not include all of the provisions from § 264.71 "Use of the Manifest System." We, therefore, are finalizing today's rule to insert the provisions of § 264.71 into § 267.71, now titled "Use of the Manifest System," and the provisions of § 264.72 into § 267.72, now titled "Manifest Discrepancies."

With these insertions, the proposed §§ 267.71 through and 267.74 are renumbered and finalized as follows:

a. Section 267.71 becomes § 267.73 (What Information Must I Keep?);

b. Section 267.72 becomes § 267.74 (Who Sees the Records?);

c. Section 267.73 becomes § 267.75 (What Reports Must I Prepare and to Whom Do I Send Them?); and

d. Section 267.74 becomes § 267.76 (What Notifications Must I Make?).

Because we are extending eligibility to certain off-site facilities, we are adding paragraphs to §§ 267.73 and 267.75 that relate to off-site facilities (e.g., § 267.73(b)(11) and (12) and § 267.75(c) and (d)).

One commenter suggested that a change to include manifest requirements in the final rule be made to allow for off-site facility eligibility. Because we are extending this rule to certain off-site facilities, where an owner/operator manages their own waste generated at several locations, the suggested change to Subpart E was appropriate.

#### 2. What Information Would I Need To Keep?

For similar reasons as with the section on "when would I need to manifest my waste?," proposed § 267.71 was developed with on-site generator facilities only. Because certain off-site facilities are now included, we are adding the applicable provisions from § 264.71 that relate to off-site facilities, into § 267.73.

One commenter noted that there appeared to be some confusion on retention times for records. The retention time for records, unless otherwise noted, is until the facility is closed, as is stated at § 267.73(b).

According to § 267.73(b), records must be retained until the facility is

closed. In addition, § 267.74(b) further states this retention period can be extended due to an unresolved enforcement action involving the facility or as requested by the Administrator. For the purpose of clarity, we removed the words "and how long do I keep them" from the heading of § 267.74.

#### 3. Who Sees the Records?

Proposed § 267.72 regarding submission of records to the permitting authority is finalized at § 267.74. No significant comments were received on this section.

#### 4. What Reports Do I Need To Prepare and to Whom Would I Need To Send Them?

Because we are finalizing today's rule to extend to certain off-site facilities, we are adding the applicable provisions from § 264.76 (Unmanifested Wastes) to proposed § 267.73, and finalizing that section at § 267.75. No significant comments were received on this section.

#### 5. What Notifications Must I Make?

Proposed § 267.74 is finalized as § 267.76. No significant comments were received on this section.

#### G. Subpart F—Releases From Solid Waste Management Units

Section 267.101 of the final rule sets forth requirements for corrective action at facilities that obtain standardized permits. These requirements have not been changed from the October 12, 2001 proposed rule.

Section 3004(u) of RCRA provides that all permits issued after November 8, 1984 and under the authority of section 3005 must require corrective action for all releases of hazardous waste or constituents from any solid waste management units (SWMU) at the facility, as necessary to protect human health and the environment (*see also* 40 CFR 264.101). Section 3004(u) requires that schedules of compliance (where corrective action cannot be completed prior to permit issuance) and financial assurances for completing such corrective action be included in the permit. In addition, section 3004(v) directs EPA to require corrective action as necessary to protect human health and the environment beyond the facility boundary, where permission to conduct such corrective action can be obtained. Because standardized permits, like non-standardized permits (*i.e.*, individual permits and permits-by-rule), will be issued under the authority of section 3005 of RCRA, these statutory corrective action requirements extend to standardized permits as well. Section

267.101(b) provides that corrective action provisions will be specified in the supplemental portion of the standardized permit (as necessary to protect human health and the environment). In the October 12, 2001 proposed rule, the Agency did not propose standardized permit conditions for corrective action. The Agency explained that, while it was attempting to streamline the permit application and permit issuance processes by developing generic design and operating standards for storage permits, it had to balance the desire for a streamlined permitting process against the need for flexibility in the corrective action program. The Agency recognized that most sites in the RCRA corrective action universe are unique, and that site-specific determinations for corrective action remedies are vital to assuring the best remedy is selected at each site. The Agency therefore proposed the same site-specific flexibility for corrective action under standardized permits as is available under non-standardized permits. The Agency believed that this approach would provide flexibility to fashion remedies that are protective of human health and the environment and that reflect the conditions and the complexities of each facility. The Agency solicited comment on this approach, but also requested suggestions for standardized corrective action permit conditions.

The Agency received few comments on this proposed approach. While some commenters agreed that site-specific flexibility should be preserved for corrective action, some suggested standard permit conditions that the Agency might adopt.

One commenter suggested that the Agency develop standard permit conditions for presumptive remedies or specified corrective action approaches which could be incorporated into the uniform portion of the standardized permit. Though the Agency agreed that the commenter raised interesting ideas, the Agency did not develop standard permit conditions based on this comment for several reasons. First, the commenter did not provide sufficient detail to develop standard conditions, and developing the suggested standard permit conditions would have required significant effort on the part of the Agency. The Agency did not believe that the level of interest demonstrated by commenters for standard permit conditions for corrective action warranted those efforts. In addition, the Agency did not believe that this rule was an appropriate forum for addressing the type of streamlined approach suggested by the commenter.

Presumptive remedies and generic standards for streamlined approaches to corrective action are based on factors such as type of waste and media requiring cleanup—factors unrelated to the eligibility criteria for standardized permitted facilities. Thus, presumptive remedies and generic standards for streamlined approaches to corrective action are program-wide issues that the Agency believes are better addressed in other forums.

Another commenter suggested that standardized permits should contain several standard permit conditions, at a minimum, including notification requirements for, and assessment of, newly identified solid waste management units, areas of concern, and newly identified releases; content requirements for workplans and reports; approval procedures for workplans and reports; and approval procedures for final remedies. The Agency did not develop standard permit conditions in response to this comment. As was the case with the first commenter, this commenter did not provide the detail that would have been necessary to develop standard permit conditions. Further, the process-oriented permit conditions suggested by the commenter would have been inconsistent with the Agency's approach to implementation of the corrective action program. Since the time of the proposal, the Agency has continued to move away from a process-oriented corrective action approach toward a results-based strategy for corrective action. In September, 2003, the Agency issued guidance entitled "Results-Based Approaches and Tailored Oversight Guidance," which encouraged the use, where appropriate, of results-based approaches to corrective action. As described in the guidance, results-based approaches emphasize outcomes, or results, in cleaning up releases, and strives to tailor process requirements to the characteristics of the specific corrective action. The Agency believes that development of the standard permit conditions for corrective action as suggested by the commenter would not be consistent with a results-based approach.

The Agency believes that the better approach is to continue to allow regulators the flexibility to develop permit conditions based on the conditions at the site. Thus, § 267.101(b) provides that provisions (or schedules of compliance) for corrective action will be specified in the supplemental portion of a standardized permit, and § 267.101(c) provides for corrective action beyond the facility boundary. These paragraphs impose requirements for corrective action at facilities that

receive standardized permits that are identical to those requirements imposed by § 264.101 at facilities that receive non-standardized permits.

In the proposed rule (*see* 66 FR 52191), the Agency also solicited comment on how cleanups under cleanup programs other than the authorized RCRA program (or under "alternate authorities") might be addressed in RCRA permits, including facilities with standardized permits. The Agency identified two approaches that might be used to address an alternate cleanup authority in a RCRA permit—the approaches were referred to as "postponement" and "deferral." Under the postponement approach, the permitting authority would postpone the determination of RCRA-specific corrective action provisions until a cleanup under an alternate State authority is completed. Under the deferral approach, the permitting authority would make a determination that corrective action is necessary, and that the appropriate corrective action at the site would be the state action run by the state alternate program. The Agency requested comment on the postponement and deferral approaches as part of its ongoing effort to determine how to effectively utilize alternate authorities to address corrective action needs at RCRA facilities.

The Agency is not taking final action in this final rule with respect to the issues raised regarding alternate authorities. The Agency does note, however, that since the time of the proposed rule, the Agency has continued, outside of the context of this rulemaking, to support the appropriate use at specific sites of alternate authorities to address RCRA corrective action, not only at permitted facilities, but at other RCRA facilities as well.<sup>3</sup> The Agency plans to address issues and options related to the use of alternate authorities discussed in the proposal, including how to address alternate authorities in RCRA permits, outside of the context of this rulemaking.<sup>4</sup>

#### H. Subpart G—Closure

##### 1. Does This Subpart Apply to Me?

The language of § 267.110 is finalized, as proposed, since no significant comments were received on this section. You are subject to the requirements of subpart G if you own or operate a

<sup>3</sup> Alternate authorities are utilized at RCRA facilities in most States. These authorities include a variety of cleanup programs, including voluntary programs and state superfund-type programs.

<sup>4</sup> It should be noted that since issues related to use of alternate authorities are not addressed in this final rule, the Agency did not respond to comments related to those issues.

facility treating or storing hazardous waste under a standardized permit.

##### 2. What General Standards Must I Meet When I Stop Operating the Unit?

The language of § 267.111 has been modified to further reinforce that facilities under a standardized permit must clean close. If a facility under a standardized permit cannot clean close, then the owner/operator of the facility must pursue post-closure options.

##### 3. What Procedures Must I Follow?

As discussed below, § 267.112 has been revised to require that the closure plan be submitted with the Notice of Intent, instead of 180 days prior to closure, as proposed. The closure plan, as part of the permit, would be approved with final permit issuance.

The Agency requested comments on several aspects of the closure plan in the proposed rule. Specifically, while the Agency proposed to require that the closure plan be submitted at least 180 days prior to closure, we also requested comment on whether the closure plan should be submitted with the Notice of Intent; not allowing the option to close as a landfill and therefore require clean closure of the units addressed in the standardized permit; and not allowing time extensions for closure. We also requested comments and suggestions for procedures to be followed in the event that you do not know that you are to receive the final volume of hazardous waste until you are within the 180 day period, and proposed options for that occurrence. Finally, we invited comment on an option of not requiring a closure plan, but, instead, including closure conditions in the standardized permit. Our response to these comments are addressed in this section of the preamble and in the Response to Comments document.

The majority of the comments received supported a requirement that the closure plan be submitted with the Notice of Intent. Those who favored the closure plan being submitted with the Notice of Intent argued that early submittal of the closure plan would be more protective of human health and the environment because it would allow for better cost estimates, would allow for early negotiation of closure conditions, and would avoid the problem of meeting time frames within the 180-day window. Moreover, as noted previously, requiring the plan up front would allow the regulatory authority to review the plan and assure the regulatory authority of the owner/operator's ability to complete closure. Early submission of a closure plan would also help support closure cost

estimate figures. Finally, the revision would allow the public to review the plan during the public comment period for the publicly noticed permit. Consequently, we agree that it would be more appropriate to require that the closure plan be submitted with the Notice of Intent and have modified the rule accordingly.

With this change to require closure plan submissions with the Notice of Intent, we have modified the proposed § 267.112(c) language to account for changes to the facility requiring a change to the closure plan. These changes may include, but are not limited to, changes in the operating plan, facility design, change in the year of closure, and unexpected events. These conditions were not relevant in the proposed rule where the closure plan was not required until 180 days prior to closure.

#### 4. Will the Public Have the Opportunity To Comment on the Plan?

Based on the changes discussed in the previous section, the public will have an opportunity to review the closure plan during the public comment period that occurs once the draft permit is public noticed.

#### 5. What Happens if the Plan Is Not Approved?

Because of the change made to require that the closure plan be submitted with the Notice of Intent, § 267.114 is no longer appropriate and thus, is not included in the final rule. The plans are considered approved when the final permit is issued, becoming part of the permit. If the plan is not acceptable, then the standardized permit will not be issued.

#### 6. After I Stop Operating, How Long Until I Must Close?

The proposed rule required that closure begin within 30 days after the facility received its final volume of hazardous waste, and that clean closure be completed within 180 days after receiving the final volume of waste, with no time extensions. (The rule intends that eligible units should be able to clean close.) Our rationale for requiring clean closure of the units subject to the standardized permit was to reduce the likelihood of any unforeseen circumstances and thus, it would be unlikely that closure would take longer than 180 days. Nevertheless, in the proposal, we invited comments on the need for extending the closure time period to allow for more time to clean close.

Most commenters agree with the Agency that, in most cases, 180 days is

an adequate amount of time to clean close container units, tank storage units, and containment buildings. However, commenters also believed it appropriate (and necessary) to include a provision in the final rule that would allow for an extension for circumstances beyond the control of the owner/operator.

Based on these comments and the Agency's experience in implementing the hazardous waste program, we agree with the commenters that a provision should be included in the final rule that would allow a one-time extension for circumstances beyond the control of the owner/operator. Therefore, we are including a provision in the final regulations at § 267.115 to allow for a one-time extension of 180 days to the time allowed to clean close to address circumstances beyond the control of the owner/operator. In cases where closure is expected to take more time, the facility will be required to use post-closure options to close.

#### 7. What Must I Do With Contaminated Equipment, Structures, and Soils?

The language of § 267.116 is finalized, as proposed. No comments were received on this section.

#### 8. How Do I Certify Closure?

The language of § 267.117 is finalized, as proposed. No comments were received on this section.

#### I. Subpart H—Financial Requirements

Much of the regulatory language in this final rule uses a format of questions and answers that refers to the permittee as "you" and to EPA as "we." Except for the introduction to the regulations (§ 267.140), the language in Subpart H does not follow the question and answer format, and it does not use these first and second person pronouns to identify the subject. There are two main reasons for this difference. First, the underlying current financial responsibility regulations in subpart H of 40 CFR parts 264 and 265, which remain integral to the proposed part 267 regulations, do not use first and second person pronouns, and EPA has not rewritten the existing part 264 and 265 regulations to conform to the question and answer format. The regulations here cross reference the existing part 264 regulations extensively, and often provide that compliance with an existing part 264 provision would constitute compliance with proposed part 267. This linkage of the regulations is necessary so that firms with facilities under both existing part 264 (or part 265 regulations) and proposed part 267 could use the same mechanism for more than one facility, thus eliminating the

expense of a separate mechanism. EPA expects that several firms using the proposed standardized permit could have other facilities operating under existing part 265 interim status or part 264 permitting standards.

Second, unlike many other permitting regulations, the responsibilities in the financial assurance regulations often extend to parties in addition to EPA (or the state permitting agency) and the permittee. For example, a trustee agrees to perform certain functions as part of a trust agreement where EPA is the beneficiary, but EPA is not a signatory. Third, parties must fulfill their responsibilities in accordance with, and the language used for the documents often must conform to, specific industry standards such as the Uniform Commercial Code. Because third parties are integral to the operation of the financial responsibility regulations, EPA has not issued regulatory language based upon first and second person subjects.

1. Who must comply with this subpart and briefly what must they do? The financial responsibility requirements for the standardized permit largely mirror the provisions found currently in 40 CFR part 264 subpart H. As discussed more fully below, the major differences involve the pay-in period for a trust for a new facility, and the adoption of a financial test that differs from the current financial test under 40 CFR part 264 subpart H. Both of these provisions were included in the proposal. Under § 267.140, you must comply with these regulations if you are the owner or operator of a facility that treats or stores waste under a standardized permit, except as provided under § 267.1(b), and § 267.140(d) which, like current part 264 subpart H, exempts the States and the Federal government from the requirements of this subpart. If you are subject to these regulations, you must prepare a closure cost estimate, demonstrate financial assurance for closure, and demonstrate financial assurance for liability. You must also notify the Regional Administrator if you are named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code.

2. Definitions. The definitions and terms in § 267.141 largely follow those currently used in § 264.141. As discussed below, the proposed regulatory text included, as a method of complying with the financial assurance requirements, a financial test that reflected the test that EPA had proposed for other hazardous waste TSDFs. Because this proposed test did not use some of the terms in the part 264 financial test, EPA omitted those

definitions from proposed part 267. For the standardized permit rule, EPA has adopted the financial tests that were contained in the proposal and so the definitions that were omitted from the proposal are again omitted from the final text of § 267.141.

3. Closure cost estimates. For traditional permits, the closure plan forms one of the bases for estimating closure costs. However, under the proposed rule, the holder of a standardized permit would not have had to prepare a closure plan until 180 days before closure. Therefore, EPA developed proposed regulatory language that could accommodate this difference. As previously discussed, many commenters objected to this provision (in part because of the difficulty of developing precise cost estimates in the absence of a closure plan) and so in the final rule, EPA has required that the closure plan be submitted with the Notice of Intent and be approved before the issuance of the standardized permit. (See section H, Subpart G, Closure preceding this section for further discussion of this issue.) Because approval of the closure plan is now required before the issuance of the standardized permit, the closure cost estimating requirements can be and are the same as for holders of individual permits. Thus, the regulatory language that was included in the proposal that would have accommodated the difference between proposed § 267.142(a)(1), (2), and (5) and the current part 264 subpart H has been removed from the final rule, and a new § 267.142(c) added. Under § 270.275(i), a copy of the closure cost estimate must be submitted with the Notice of Intent. This is consistent with the requirement for other permits in § 270.14(b)(15).

As under the requirements for other permitted facilities, you must develop and keep at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the closure requirements of §§ 267.111 through 267.117, and applicable closure requirements in §§ 267.176, 267.201, and 267.1108. As under the requirements for facilities operating under individual permits, you must base these cost estimates upon a closure plan. Under § 267.142(a)(1), the estimate must equal the cost of final closure at the point in your facility's active life operation would make closure the most expensive. We are requiring in § 267.142(a)(2) that you base the closure cost estimate on the cost to hire a third party to close the facility. In addition, the closure cost estimate may not

incorporate any salvage value from the sale of hazardous waste, non-hazardous waste, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure (§ 267.142(a)(3)). This disallowance of a salvage credit reflects the Agency's conviction that allowing salvage value to be credited is inconsistent with the goal of ensuring adequate funds are available in the event that the owner or operator fails to cover the costs of closure. Further, your cost estimate may not incorporate a zero cost for hazardous waste or non-hazardous waste that you might be able to sell. The value of waste at closure sometime in the future is too speculative to allow it to offset closure costs (§ 267.142(a)(4)).

Under § 267.142(b), you must adjust the closure cost estimate for inflation within 60 days before the anniversary date you established for the financial instruments utilized to comply with § 267.143. Proposed § 267.143, which we discuss below, would require an instrument to demonstrate financial assurance for closure. If you use the financial test or corporate guarantee to demonstrate financial responsibility, you must update your closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submitting the updated financial test information to the Regional Administrator. Because the financial test submission must be updated for inflation within 90 days of the close of the firm's fiscal year, effectively both users of the financial test and corporate guarantee, and users of the other mechanisms must update the cost estimates on the same schedule.

However, we requested public comment on whether to change the deadline for updating the cost estimate for inflation for users of the financial test to 90 days after the close of the fiscal year. Changing to 90 days would have made this requirement the same as the deadline for updating the financial test. After evaluating the public comments, we decided to keep the dates for updating cost estimates for holders of standardized permits the same as for individual permits. Changing these dates would have made them inconsistent with the dates for individual permits. While two commenters recommended the change, another recommended against it and we determined that keeping the dates consistent with the other program requirements would be preferable.

In adjusting your cost estimate, you may recalculate the maximum costs in current dollars or use an inflation factor derived from the Implicit Price Deflator

for Gross Domestic Product published by the U.S. Department of Commerce. This is a slightly different specification for the adjustment than is currently in § 264.142 because those regulations specify the use of the Implicit Price Deflator for Gross *National* Product rather than the Gross *Domestic* Product. We proposed using the Gross Domestic Product deflator under this rule because the Gross Domestic Product Deflator is more readily available. Generally, the differences between the two series are not significant and we believe using the more readily available information will help you to better comply with the requirement to adjust your cost estimate for inflation. We received no adverse comment on using the Gross Domestic Product deflator and therefore, have included it in the final rule. EPA notes it has issued guidance allowing owners and operators of facilities with individual permits to use the Implicit Price Deflator for Gross Domestic Product under § 264.142 so long as they are consistent in its use.

Under proposed § 267.142(a)(5), you would have been required to revise your closure cost estimate in accordance with the closure plan within 30 days after submitting your closure plan. This provision is not part of the final rule because now the closure plan must be submitted with the Notice of Intent. The requirements for closure costs are the same in § 267.142 as in § 264.142. You would also adjust the revised closure cost estimate for inflation as proposed in § 267.142(b). These requirements mirror those currently in part 264 for facilities operating under individual permits and have been incorporated into this final rule.

As with the current § 264.142(c) requirement, under § 267.142(c), you must update the closure cost estimate when a modification to the closure plan has been approved. If you modify your operations so that the cost of closure would increase, you must increase the closure cost estimate and provide financial assurance for that amount under § 267.143.

Similarly, the requirements in § 267.142(d) correspond to the existing requirements in § 264.142(d) and require you to maintain the latest cost estimate at the facility, and, when the cost estimate has been adjusted for inflation as required under § 267.142, the latest adjusted closure cost estimate.

In the preamble and docket to the proposed rule, we described several options that the holder of a standardized permit could use to develop a closure cost estimate in the absence of a closure plan. As discussed more fully above in Subpart G—Closure, EPA is requiring

facilities to submit a closure plan as part of the Notice of Intent and the closure plan will be available when the closure cost estimate is prepared. As a result, the final rule does not need to contain tools to develop a closure cost estimate in the absence of a closure plan.

However, because of comments suggesting that the various options for developing closure cost estimates could be useful, we note that the Options remain in the docket and may be used as aids in computing cost estimates.

EPA also requested comment on waiving cost estimates for facilities that use the financial test (Option 6). Some commenters objected to this because firms can initially pass the financial test, but then later fail to qualify. Such firms will need a cost estimate to determine the amount of the replacement financial assurance instrument. EPA agrees with the comments that having a cost estimate will be useful in determining the amount of a replacement financial assurance instrument, if a facility later fails to qualify and, so, EPA is not providing a waiver for cost estimates for facilities that use the financial test. One of the commenters noted that a firm could pass the financial test and then declare bankruptcy without a cost estimate so that the permitting authority could have difficulty in presenting a claim in bankruptcy court. EPA notes that closure costs are not actually "claims" in bankruptcy court, but are regulatory obligations imposed via governmental policy and regulatory filings and, as such, continue despite a bankruptcy filing. The Agency agrees, however, that having a cost estimate in place during a bankruptcy may be helpful, not only because it aids the owner/operator in evaluating its financial and environmental obligations, but also because it may assist the regulatory authority in determining the extent of the owner/operator's regulatory obligations.

4. Financial assurance for closure. We designed the requirements in § 267.142 to ensure that the cost estimate which forms the basis for determining the amount of the financial assurance instrument required in § 267.143 would provide sufficient funds to close the facility properly at any time. We want to ensure that there would be sufficient financial resources to close the facility properly even in the event that the facility enters bankruptcy. The requirements in § 267.143 specify the mechanisms from which you must choose to demonstrate financial assurance for closure obligations.

The requirements in § 267.143 allow the use of the same mechanisms that are

available to owners and operators of facilities operating under individual permits currently issued under part 264. However, we have made modifications to these requirements (from the analogous requirements in part 264) to account for the particular circumstances of the standardized permit. The differences between the requirements under §§ 264.143 and 267.143 are discussed below.

#### Closure Trust Fund (§ 267.143(a))

Under § 267.143(a), the pay-in period for the closure trust fund for a facility with a standardized permit differs slightly from the pay-in period for facilities with individual permits issued under part 264. Currently, if you have a new facility seeking coverage under a part 264 permit, you must make annual payments into the trust fund over the remaining life of your facility, as estimated by your closure plan, or over the life of the permit (which is usually ten years), whichever is shorter. Under the proposed standardized permit procedures, however, we proposed a period of three years as the pay-in period. We chose this time period (which is shorter than the life of the permit as currently allowed for individual permits under § 264.143(a)(3)) because the current requirements in § 264.143(a)(3) were selected to accommodate the types of operations, such as landfills, which would normally be receiving waste over a period of years, with potentially increasing closure costs over that time period. Conversely, we did not expect facilities proposing to operate under the standardized permit to build up their waste volumes, and the resulting closure costs, over time. Moreover, the cost for closing a facility operating under the standardized permit would not include the costs of ground water monitoring, covers, or post-closure monitoring, so we expected the cost to be less than for many of the other types of facilities with individual permits that are currently subject to § 264.143. Therefore, we anticipated that the burden of the three-year pay-in period would not be excessive. Further, we noted that requiring a three-year pay-in period can preclude some potential problems that can arise under the longer pay-in period. For example, a long pay-in period can lead to insufficient funds being available at the time of closure, if the facility closes early. If the financial condition of the permittee were to deteriorate toward the beginning of the pay-in period, the owner or operator would not yet have funded a substantial fraction of the trust, and the permitting authority could be left with insufficient

funds for closure in the event of the permittee's failure to perform closure. Furthermore, the three-year period is consistent with the requirements for financial assurance for commercial storers of PCB wastes. See § 761.65(g)(1)(i). EPA requested comment on the proposed use of three years as the pay-in period for a trust fund.

We received several comments on the pay-in period for the trust fund for new facilities. One state noted that a three-year pay-in period would reduce the incentive for interim status facilities or generators who wish to have the option to store for more than 90 days to apply for a standardized permit. However, as noted in the preamble to the proposal, the pay-in period for interim status facilities that use, or switch to, a trust fund ended on July 6, 2002 (twenty years after the effective date of the financial responsibility rules for closure and post-closure care). Conversion to a permit, whether standardized or individual, does not reopen the pay-in period or extend the pay-in period. An owner or operator who switches from another mechanism to a trust fund under a standardized permit must fully fund the trust. For a generator who wishes to obtain a standardized permit, we believe that a three-year pay-in period provides sufficient time to afford a trust fund. In addition, we note that generators are not required to use a funded trust fund and can instead use other mechanisms such as a letter of credit or surety bonds that require a smaller cash outlay.

We received a comment from a state and an industry association that the three-year pay-in period was appropriate. On the other hand, some states and the Association of State and Territorial Solid Waste Management Officials objected to the three-year pay-in period and instead recommended a fully funded trust. Upon review of these comments, the Agency believes that the three-year pay-in period strikes an appropriate balance between the need for complete financial assurance, and the possibility that immediate funding of a trust would be prohibitively expensive. Also, a state that wishes to adopt the standardized permit rule, but believes that the three-year pay-in period is too long is not precluded by RCRA from requiring immediate funding of the trust.

An existing facility whose trust fund's value is less than its closure cost estimate when it receives a standardized permit would have 60 days to increase the value of the trust to the amount of the closure cost estimate. The requirement proposed in § 267.143(a)(3)

clarified that the 60 days will apply both to existing facilities under interim status and under individual permits, regardless of when they obtain a standardized permit. This means that the facility would effectively have 60 days to increase the value of the trust. EPA received no comments on this proposal and so has included it in the final rule.

#### Surety Bonds (§ 267.143(b) and (c))

The proposed rule would have allowed you to use surety bonds guaranteeing either payment or performance as mechanisms to demonstrate compliance with proposed § 267.143(b) or (c), respectively. As in the existing part 264 subpart H standards, you would also have to establish a standby trust fund. Commenters objected to the use of a surety bond in the absence of a closure plan because it would place an undue burden on permitting agencies in the event that the surety had to close the facility under the performance bond. We agree with this comment, and is another reason that the Agency has required an approved closure plan to be submitted with the Notice of Intent and before the issuance of the standardized permit.

We received a comment from a state recommending that we require 120 days of notice before the cancellation of a surety bond, or a letter of credit under the solid waste financial regulations so that those regulations mirror the requirements for hazardous waste facilities. While this comment is outside of the scope of this rulemaking, we would note our agreement with the desirability of 120 days of notice before the cancellation of a surety bond or a letter of credit and point out that this is already required. The financial responsibility regulations for municipal solid waste landfill facilities are in 40 CFR 258.70 to 258.75. In 40 CFR 258.74(b)(7), the surety is permitted to cancel the bond 120 days after sending a notice of cancellation by certified mail to the owner or operator and to the State Director. 40 CFR 258.74(c)(3) has a similar requirement for advance notice of cancellation of a letter of credit. The federal regulations already incorporate the amount of notice recommended by the state in their comment.

#### Letter of Credit (§ 267.143(d))

The proposed regulations would allow you to use an irrevocable standby letter of credit, and a standby trust fund as specified in existing § 264.143(d). We received no significant comment on this portion of the proposal and have incorporated this portion of the proposal into the final rule.

#### Closure Insurance (§ 267.143(e))

Under proposed § 267.143(e), we proposed to allow you to use insurance as a mechanism for demonstrating financial assurance for closure. The requirements of this section referenced the corresponding existing requirements in § 264.143(e). We also requested comments on the conclusions of the EPA Inspector's General report about captive insurance, and on whether to require that insurers who provide financial assurance insurance policies must have a minimum rating from a rating agency.

ASTSWMO objected to allowing insurance for closure, and made the following points: "Closure insurance should not be allowed for facilities with standardized permits due to the uncertainties of insurance as an appropriate financial assurance mechanism in general and the potential problems associated with captive insurance in particular. If EPA does wish to allow closure insurance, the insurance policy must guarantee that funds will be available for closure."

In reviewing this comment, EPA contacted the commenter to seek clarification of some of the points raised. The commenter noted that closure insurance policies can present difficulties for permitting agencies because the regulations do not specify the language of the policies, but only the language of the certificate of insurance. The commenter noted that endorsements can require a careful review to ensure that they have not changed the terms of the policy in a way that would render it inconsistent with the regulatory requirements. Also, the commenter clarified that the concern of payment by policies included concern that insurers could become insolvent, as occurred with Reliance Insurance, and be unable to pay claims.

Although EPA agrees that insurance policies can require a careful review, the rights and obligations under insurance policies issued to satisfy state or federal financial assurance requirements are controlled by those requirements. Thus, where a policy is issued to comply with RCRA financial assurance requirements set forth in statutes or regulations, those requirements will be read into the policy and the policy will be effectively amended to conform to the statute. Non-conforming provisions are null and void. See, *Holmes-Appleman on Insurance*, Section 22.1 et seq., esp. pp. 365, 368, 379, 380; *Couch on Insurance*, Third Edition, Sections 19:1, 19:5 and 19:11.

The issues raised by the commenter transcend the standardized permit rule

and could apply to insurance for other financial assurance obligations under parts 264 and 265. EPA did not propose or seek comment on an alternative that would disallow insurance as a financial assurance mechanism. As noted in the preamble to the proposed rule (66 FR 52192 at 52198), we did not reopen the existing regulations to public comment, except as explicitly set forth under the proposed rule.

Because of interest by ASTSWMO and other issues involving insurance, an EPA federal advisory committee, the Environmental Financial Advisory Board, is undertaking a review of insurance as a financial assurance mechanism for Subtitle C facilities; ASTSWMO has been a part of this review. EPA believes that the suitability of insurance as a financial assurance mechanism is best resolved for all Subtitle C facilities, rather than in a piecemeal fashion, following an opportunity to review any recommendations from the Environmental Financial Advisory Board. Since companies that may seek to obtain a standardized permit may already have an insurance policy for the facility, disallowance of insurance in the standardized permit would provide an disincentive to obtaining a standardized permit. States can, however, be more stringent than the federal requirement by prescribing policy language or disallowing insurance when they adopt this rule.

We also agree with the later portion of the ASTSWMO comment that "the insurance policy must guarantee that funds will be available for closure." In the proposal, we had proposed that insurance as specified in 40 CFR 264.143(e) would be an allowable mechanism. 40 CFR 264.143(e)(4) states "The insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to the amount of the policy, upon the direction of the Regional Administrator, to such party or parties as the Regional Administrator specifies." We believe that this language addresses the concern in the ASTSWMO comment regarding the need to guarantee that funds will be available for closure.

On the issue of captive insurance, in addition to the comments from ASTSWMO, we received several comments both supporting and recommending against accepting captive insurance as a mechanism. In the proposed rule, we asked for information regarding captive insurance, but did not make any specific proposals. In this

final rulemaking, we are not determining whether or not to allow captive insurance as a financial assurance mechanism. EPA is continuing to analyze the information and comments it received on the proposed rule, and is preparing a report to Congress that was required by an EPA appropriations bill. While the focus of that report will be on insurance for municipal solid waste landfills, the analysis of financial assurance issues surrounding captive insurance may apply to both municipal solid waste and hazardous waste facilities.

Finally, we had proposed requiring that insurance providers have a minimum rating from either Standard & Poor's, Moody's, or A. M. Best. Comments on this issue included support, objections to the cost of obtaining a rating for a captive insurer, and questions about the relationship between the rating of the parent insurance company and the rating of a subsidiary that would be writing environmental policies. The Agency is still evaluating these issues and the comments submitted; therefore, the Agency is not promulgating a final rule on a minimum rating of insurers at this time.

Financial assurance.

Financial Test (§ 267.143(f) and Corporate Guarantee (§ 267.143(g))

The proposed regulation in § 267.143(f) would have allowed the use of a financial test by you or by a corporate guarantor, as is currently provided in § 264.143(f). The test that EPA proposed differs from the test that is currently in effect in parts 264 and 265.

The proposal included changes to the financial test that would make the test less available to firms more likely to enter bankruptcy. The test would do this by changing the financial test ratios to make the test less available to firms with large debts compared with their cash flow or net worth. However, the proposed rule allowed firms that pass the financial test to assure a higher level of obligations than the current RCRA Subtitle C financial test. Under the financial test in 40 CFR parts 264 and 265, companies must have tangible net worth at least six times the amount of the obligations covered, and also of at least \$10 million. Firms that pass the proposed test must also have \$10 million in tangible net worth. They can assure an amount of obligations up to \$10 million less than their tangible net worth.

Some commenters suggested that we should reconsider the financial test in light of recent corporate failures and

financial scandals of Fortune 500 companies with audited financial statements, while other commenters argued that the regulations should make available all the mechanisms that are currently available to firms. For the reasons explained at proposal, the Agency continues to believe that the rules should contain a financial test, but are maintaining the approach included in the proposal—that is, continue to make available a mechanism that allows firms with a low probability of failure to self insure, and at the same time reduce the risk of the financial test by disallowing its use by companies that are more likely to enter bankruptcy. Some states may determine that they wish to be more stringent than this requirement and further restrict the availability of the financial test. This is allowable under RCRA.

In the proposal, we also requested comments on not requiring companies that pass the financial test to provide a cost estimate. As noted above, based upon public comment, we have decided that we will still require cost estimates from such firms.

The record keeping and reporting requirements of the proposed rule (§ 267.143(f)(2)(i)(C)) would only require a special report from the independent certified public accountant in instances where the Agency could not verify financial data in the chief financial officer's letter from the firm's financial report. The proposal was intended to reduce the reporting burden and the expense of obtaining a letter from an outside auditor for any user of the financial test whose CFO submitted information that could be verified from the user's audited financial statements. We received comments from states supporting and objecting to this change. The objection involved the difficulty for the regulatory agency in reviewing financial statements and determining whether data in the chief financial officer's letter were taken from the firm's financial report. EPA agrees that this may present some difficulties and is modifying the language of the CFO's letter to require the CFO to note whether the information in the letter is taken directly from the audited financial statement. If not, the regulation requires an outside auditor's report explaining how the information was derived. Because we continue to believe that the proposed approach, as modified, would reduce the reporting burden without significantly impacting the usefulness of the information provided, we have incorporated it in the final rule.

The proposed regulation did not prescribe language for the chief financial officer's letter as we currently

do under § 264.151(f). Commenters advised us that prescribing the language of the Chief Financial Officer's letter would facilitate compliance checks by the state permitting agency. Therefore in the final rule, we are specifying language for the CFO letter. This language appears in § 267.151(a).

Because this rulemaking does not change the financial test in parts 264 and 265, owners or operators who have both standardized permit facilities and facilities using the financial tests in parts 264 and 265 may have questions about which chief financial officer's letter to use. For facilities with the standardized permit, the chief financial officer should use the letter in § 267.151. This letter will require the enumeration of costs assured through financial tests in parts 264 and 265. For interim status or individually permitted facilities, the chief financial officer will continue to use the letters in § 264.151.

Situations may arise where an owner or operator has two types of units at a facility, one type subject to the financial assurance requirements of Part 267, and the second subject to the financial assurance requirements of Part 264 or Part 265, but cannot meet the applicable financial test for both types. For example, the owner or operator of a facility has units subject to an individual permit and provides financial assurance via the financial test in § 264.143(f). The owner or operator wants to add new units subject to a standardized permit, but does not qualify via the financial test in § 267.143(f) for those new units. Such a person would have to use a third-party financial assurance mechanism under § 267.143, to qualify for a standardized permit for the new units.

Similarly, an owner or operator may have two or more facilities, with one set of facilities subject to a standardized permit with Part 267 financial assurance, and another set subject to individual permits or operating in interim status with financial assurance via Part 264 or Part 265. The financial assurance requirement for the facilities are determined by their respective regulations. This is consistent with the situation under Parts 264 and 265. For example, an owner or operator may use a performance surety bond at the facility permitted under an individual permit that requires financial assurance consistent with Part 264, but may use a mechanism other than a bond consistent with part 265 at a facility operating under interim status.

Use of Multiple Mechanisms

Proposed § 267.143(h) would allow you to utilize a combination of

mechanisms at your facility. We received comments both supporting and objecting to this provision. The objection was that if an owner or operator could only cover part of the closure costs with the financial test, they should not be allowed to use the financial test for any of the costs, and instead should be required to use a third-party mechanism.

Because the financial test in the standardized permit rule is a better predictor of bankruptcy than the test in Parts 264 and 265, the risk of a facility qualifying for the test and then entering bankruptcy is lower than with the Parts 264/265 tests. The test in the proposal and the final rule requires that the firm have at least \$10 million more in tangible net worth than the amount assured through a financial test. Disallowing the use of the financial test in combination with a third-party mechanism could establish the situation where owners or operators each with two facilities and each with identical financial characteristics and total closure costs could have different amounts that could be covered by the financial test, based upon how the costs were distributed between their respective operations. For example, two companies could both have \$12 million in tangible net worth and meet the other requirements of the financial test with identical financial statements. The first company has two facilities, one with \$1.6 million in closure costs and the other with \$1.4 million in closure costs. The second company has one facility with \$2 million in closure costs, and another facility with \$1 million in closure costs. If EPA were to disallow the use of the financial test in combination with other mechanisms, the first company could use the test for only \$1.6 million of the closure costs, but the second could use it for \$2 million.

An all or nothing approach also could increase the incentive to underestimate closure costs, particularly for a facility with a closure cost estimate only slightly over the amount that could be covered by the test. The approach in the proposed and final rules is consistent with the regulations already adopted by EPA governing financial requirements for municipal solid waste landfills, and with an earlier proposal to revise the RCRA Subtitle C financial test, which is still under consideration (56 FR 30201, July 1, 1991), and with regulations governing third-party liability coverage. EPA determined that it should incorporate this flexibility into the final rule, but, as previously noted, under RCRA a state may adopt more stringent regulations.

Under proposed § 267.143(i), if you have multiple facilities with a standardized permit, you would be able to use a single mechanism for more than one of your facilities. This provides the same flexibility that owners or operators of facilities with individual permits or interim status facilities have under existing §§ 264.143 and 265.143. This flexibility is also included in the final rule.

5. Post closure financial responsibility. Because the proposed standardized permit rule would only be available to facilities that can clean close, the proposed standardized permit regulation did not anticipate a need for post-closure cost estimates, or financial assurance for post-closure care. Similarly there is no need for mechanisms for combining financial assurance for closure and post-closure care. Therefore, the final regulations in part 267 do not have provisions reflecting the existing requirements of § 264.144–146. As noted in § 267.111(c), however, if a unit at a standardized permit facility cannot be clean closed, then the owner/operator must apply for a permit as a landfill in accordance with 40 CFR part 270. The post closure financial responsibility regulations in §§ 264.144 and 145 would then apply.

6. Liability Requirements. We proposed to require financial assurance for third party liability for sudden accidental occurrences. We proposed that you have and maintain liability coverage of at least \$1 million per occurrence, with an annual aggregate of at least \$2 million exclusive of legal costs (§ 267.147(a)). These proposed requirements are the same as for facilities with individual permits, and apply to the facility or a group of facilities. Thus, if the owner or operator of facilities with individual permits had the required liability coverage for those facilities, then covering these facilities under the standardized permit would not increase the dollar amount of the liability coverage.

The proposed mechanisms available for demonstrating financial assurance for third party liability were the same under the standardized permit rule as for units covered by individual permits. In the proposed rule, we arranged the mechanisms in the same order as they appear for closure, even though this is different from the order currently in § 264.147. We requested comments on whether this makes the regulation easier to follow, or if we should organize proposed § 267.147 in the same order as existing § 264.147. The mechanisms for third party liability would be a trust fund (§ 267.147(a)(1)), surety bond (§ 267.147(a)(2)), letter of credit

(§ 267.147(a)(3)), insurance (§ 267.147(a)(4)), financial test (§ 267.147(a)(5)), or guarantee (§ 267.147(a)(6)). We would also allow the use of multiple mechanisms under proposed § 267.147(a)(7), as are allowed under existing § 264.147(a)(6). In the case of reordering the mechanisms in § 267.147 as they are in § 267.143, the commenters agreed with this approach. On other aspects of the proposal, there were no adverse comments and the final rule has been finalized, as proposed, with respect to these aspects.

In the proposal, we requested comments on whether pure captive insurance should be treated differently for third-party liability coverage, where coverage is based on the risk an event will occur, as compared to closure, where the risk is based on an event that will, in fact, occur. As previously noted, this rulemaking is not promulgating a decision on captive insurance.

We proposed that the standardized permit would not be available for land disposal units such as surface impoundments, landfills, land treatment facilities, or disposal miscellaneous units. Therefore, requirements for land disposal units under existing § 264.147(b) to maintain third party liability for non-sudden accidental occurrences would not be necessary for standardized permit units. The proposed regulation and the final regulation reserves § 267.147(b).

Because the proposed standardized permit was intended to rely upon limited interaction between the permittee and the permitting agency, we believed it would not be appropriate to include the provisions of existing § 264.147(c) and (d). These provisions, respectively, allow the owner or operator to request a variance from the amounts required in § 264.147(a), or allow the Regional Administrator to require a different amount. There is no corresponding provision in the proposed § 264.147 and the corresponding paragraphs were reserved. As EPA received no adverse comment on excluding these provisions, the rule is finalized, as proposed.

Along with the proposed changes to the financial test for closure, we had previously proposed changes to the financial test for liability coverage (56 FR 30201, July 1, 1991 and 59 FR 51523, October 12, 1994). The proposed changes to the financial test for liability coverage were included in the proposal for this regulation. EPA received no adverse comment on this test. As previously noted, we have promulgated the proposed financial test for closure and have also decided to promulgate the proposed financial test for liability here

as well. If a company is using the financial test for closure of its standardized permit units, and wishes to also use the financial test for third party liability coverage of its standardized permit units, it should use the chief financial officer's letter in § 267.151(a). In § 267.151(b) we have provided language for the chief financial officer's letter for companies that use the financial test only for third party liability for facilities with standardized permits.

Finally, because the financial tests for facilities regulated under interim status and individual permits differ from the financial tests under the standardized permit rules, a question may arise on which chief financial officer's letter to use to demonstrate compliance with third-party liability requirements. Companies that use the financial test only for third-party liability (and not for closure), and who also have facilities using the financial test either for a facility with an individual permit or operating under interim status, should use the language for the chief financial officer's letter in 40 CFR 264.151(g). A company that qualifies for the financial test under the individual permit regulations will also qualify under the standardized permit regulations for liability coverage. As noted previously, firms that use the financial test to provide financial assurance for closure for standardized permit units and interim and individual permit units, should use the chief financial officer's letter in § 267.151 for the standardized permit units, and the chief financial officer's letter in § 264.151 for interim status and individual permit units.

7. Other provisions of the financial requirements. We proposed that the requirements in existing § 264.148 to notify the permitting authority in the event of a bankruptcy would apply also to the standardized permit (see proposed § 267.148). We also referenced this requirement in proposed § 267.140(c). There were no adverse comments on this portion of the proposal, and we have included this provision in the final rule.

Under existing § 264.149, if your facility is in a state where EPA administers the program, but the state imposes its own financial assurance mechanism, you may continue to use the state approved mechanism. There were only three states where we administered the program, and we did not expect that these states have their own mechanisms. Therefore, we did not include an analogous provision in the proposal. We did not receive adverse comment on this omission. For the reasons discussed in the preamble to the

proposal, we did not include the analogous provision in the final rule, and have reserved § 267.149 in this final rulemaking.

In the financial responsibility regulations covering facilities with permits under part 264, States can assume responsibility for an owner or operator's compliance with existing §§ 264.143 and 147 (§ 264.150). We included a similar provision (§ 267.150) in the proposal, but requested comment on whether such a provision is appropriate for standardized permits. We asked if states did in fact undertake such responsibilities, and asked if they would do so for holders of a standardized permit. Only one state commented on this provision and noted that it was not used. While we do not believe that this provision would have much use, we also see no harm in retaining this provision to provide flexibility should the circumstance warrant it. Therefore, we have included this provision in the final rule.

The proposed language of §§ 267.143 and 267.147 references existing § 264.151, and would require the use of the language in existing § 264.151. Section 264.151 contains the exact wording of the instruments used to demonstrate financial assurance. In light of the substantial amount of text in existing § 264.151, we decided not to propose the creation of a § 267.151. This was similar to our decision not to include the instrument language in the current interim status standards in part 265. Because we received comments that we should provide standard language for the chief financial officer's letter as part of the financial test, we have provided that language in § 267.151. If the Agency promulgates changes to the financial test in §§ 264 and 265 for holders of individual permits that mirror the requirements in § 267, EPA may eliminate the language in § 267.151 and simply require the language in a revised § 264.151 in a future rulemaking.

#### *J. Subpart I—Use and Management of Containers*

The requirements of part 267 subpart I are finalized, as proposed, and apply to the storage and/or non-thermal treatment of hazardous wastes in containers. No significant comments were received on this subpart, which includes:

1. What Standards Apply to the Containers? (§ 267.171)
2. What are the Inspection Requirements? (§ 267.172)
3. What Standards Apply to the Container Storage Area? (§ 267.173)

4. What Special Requirements Do I Need to Meet for Ignitable or Reactive Waste? (§ 267.174)
5. What Special Requirements Do I Need to Meet for Incompatible Wastes? (§ 267.175)
6. What Must I Do When I Want to Stop Using the Containers? (§ 267.176)
7. What Air Emission Standards Apply? (§ 267.177)

One comment regarding residues in empty containers, addressed the applicability language in § 267.170 which refers to § 267.1(b), which in turn, refers to part 261 subpart A. The commenter suggested that instead of indirectly referencing § 261.7, we add "part 267" to the list of cites in § 261.7 as a more direct method of addressing residues remaining in empty containers. We agree with the commenter, and will finalize the language in § 267.170 as proposed, and will add the requested language to § 261.7.

#### *K. Subpart J—Tank Systems*

1. Does This Subpart Apply to Me?

The applicability language of § 267.190 is finalized, as proposed. The final rule applies to above-ground and on-ground tanks, and excludes underground and in-ground tanks. Also excluded, are tanks with underground ancillary equipment (e.g., piping).

We received several comments on the applicability of the standardized permit rule to tanks and tank systems. Most commenters believed that underground and in-ground tanks should be excluded from eligibility, noting that underground and in-ground tanks are more difficult to inspect and are difficult to perform integrity verification, noting that such tanks pose a risk of corrosion, damage, and leakage. Some commenters also argued that underground piping should not be allowed under a standardized permit, for the same reasons underground and in-ground tanks should be excluded. However, one commenter suggested that the final rule should allow underground tanks and/or piping to be eligible for the standardized permit, and that States should be given the discretion to impose individual permits when deemed necessary. The commenter also noted that certain wastes are more safely stored underground. Another commenter also supported allowing underground and in-ground tanks to be eligible for the standardized permit, suggesting the Agency incorporate similar provisions to § 264.192.

Based on the comments received and the Agency's experience in implementing the hazardous waste rules, we agree with those commenters

that argued that underground and in-ground tanks, and underground piping are inherently harder to inspect, and may be more susceptible to corrosion and leakage. The standardized permit is designed to be a streamlined approach to permitting, and therefore we believe that more complex tank systems might be better served under an individual permit. Furthermore, units under the standardized permit would be required to be clean closed, and a properly designed, constructed, and operated tank system with secondary containment should always be able to clean close with minimal unforeseen contingencies. Therefore, the final rule does not allow underground and in-ground tanks, and tanks with underground piping to be eligible for a standardized permit.

## 2. What Are the Required Design and Construction Standards for New Tank Systems or Components?

The requirements of § 267.191 are finalized, as proposed. We did receive a comment about the Agency not proposing design and construction standards for facilities with underground tank systems. The commenter believed that there was no reason to exclude underground piping associated with above-ground tanks provided the integrity of the underground piping is verified and documented at regular intervals. As we stated previously, underground tank systems, and above ground /on-ground tanks with underground piping are not eligible for a standardized permit. The streamlined nature of the standardized permit process does not lend itself to requiring periodic verification and documentation of underground piping integrity.

## 3. What Handling and Inspection Procedures Must I Follow During Installation of New Tank Systems?

The requirements of § 267.192 are finalized as proposed. No significant comments were received on this section.

## 4. What Testing Must I Do for New Tank Systems?

The requirements of § 267.193 are finalized as proposed, except that the title of the section is changed to read "What Testing Must I do for New Tank Systems?" One commenter requested this change to improve the clarity of the section, and we agree.

## 5. What Installation Requirements Must I Follow?

The tank installation requirements of § 267.194 are finalized as proposed. No

significant comments were received on this section.

## 6. What Are the Secondary Containment Requirements?

We are finalizing § 267.195 with some changes. In our proposal, we allowed tanks that could not detect a leak or spill within 24 hours to be eligible for the standardized permit. However, instead of providing a demonstration to the Director (as is required in 40 CFR 264.193(c)(3)), we discussed in the preamble that a facility would self-certify and document that a leak or spill cannot be detected and/or removed within 24 hours, and keep the certification on-site.

One commenter noted that the proposed rule included this provision, but was not referenced in subsequent sections about information that must be kept at the facility, or certifications that must be submitted. The standardized permit rule is intended for units (tanks, containers, containment buildings) that are easily designed and operated, and with minimal contingencies. More complex situations involving tank systems where leaks are difficult to detect, are better served under an individual permit. Furthermore, such demonstrations only serve to lengthen the overall permitting process, detracting from the intent of the rule to streamline the process as much as possible. Therefore, in the final rule, the provisions of § 267.195 will require that a facility's secondary containment system be able to detect and/or remove a leak or spill within 24 hours. The rule will not provide a self-certification provision for systems that cannot detect and/or remove leaks or spills within 24 hours. These tank systems will need an individual permit.

## 7. What Are the Required Devices for Secondary Containment and What Are Their Design, Operating, and Installation Requirements?

The final requirements of § 267.196 are modified from what was proposed. Specifically, although no significant comments were received on this section, we are removing the reference to "vaults" from § 267.196. Vaults are typically associated with underground tanks, and underground tanks are not eligible for a standardized permit.

## 8. What Are the Requirements for Ancillary Equipment?

The requirements of § 267.197 are finalized as proposed with one minor clarification to the proposed language. That change adds the words "Above ground" at the start of § 267.197(a), making the language consistent with the

language in § 264.193(f)(1). No significant comments were received on this section.

## 9. The Following Sections of This Subpart are Finalized as Proposed, Because no Significant Comments Were Received.

- What are the general operating requirements for my tank system? (§ 267.198)
- What inspection requirements must I meet? (§ 267.199)
- What must I do in case of a leak or spill? (§ 267.200)
- What must I do when I stop operating the tank system? (§ 267.201)
- What special requirements must I meet for ignitable or reactive wastes? (§ 267.202)
- What special requirements must I meet for incompatible wastes? (§ 267.203)
- What air emission standards apply? (§ 267.204)

### L. Subpart DD—Containment Buildings

No comments were received on Subpart DD of Part 267, therefore §§ 267.1100 through 267.1108 are finalized as proposed.

### V. Section by Section Analysis and Response to Comments for Part 270—EPA Administered Permit Programs: The Hazardous Waste Permit Program

This part of the RCRA hazardous waste regulations contains specific requirements for permit applications, permit conditions, changes to permits, expirations and continuation of permits, interim status, and special forms of permits.

#### A. Specific Changes to Part 270

##### 1. Purpose and Scope.

Section 270.1 has been finalized with changes to what facilities are eligible for a standardized permit, as discussed previously. We are also using the following language "Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that generate hazardous waste \* \* \*" The change was intended to further clarify the types of facilities that may be eligible for the standardized permit. No significant comments were received on this section.

##### 2. Definitions

The proposed definitions at § 270.2 for permit and standardized permit are finalized as proposed. No significant comments were received on this section.

### 3. Permit Applications

The requirements of § 270.10(a) are finalized as proposed. No significant comments were received on this section.

### 4. Permit Re-Application

The requirements of § 270.10(h) are finalized as proposed. No significant comments were received on this section.

### 5. Transfer of Permits

The requirements of § 270.40 are changed to indicate how the standardized permit can be modified to reflect a change in ownership. The final rule adds to § 270.40 a reference to § 124.213 (routine changes with prior approval). Comments on this issue are discussed in the preamble at Section III.D—Maintaining a Standardized Permit. With this change, transfer of permits would be a routine change with prior approval of the Director.

### 6. Modification or Revocation and Reissuance of Permits

The requirements of § 270.41 are finalized as proposed. Comments on this section were discussed previously in the preamble at Section III.A.2.

### 7. Continuation of Expiring Permits

One commenter noted that in cases where an expiring standardized permit holder is informed that he/she is no longer eligible to continue operating under a standardized permit, the expiring permit holder only has 60 days to submit a part B permit application. Sixty days, the commenter noted, would not be sufficient time to submit the needed materials, and suggests 120 days to submit the information, just as interim status facilities have 120 days to submit their Part B information. We disagree with the commenter. As noted previously, while the permit application submitted to EPA does not need to contain all the information contained in the Part B permit application, that information must still be kept on-site at the facility and available for inspection. Therefore, we believe that 60 days should be adequate time to package and submit the Part B application.

### 8. Standardized Permits

The language at § 270.67 is finalized as proposed with a minor modification. The applicability of standardized permits has already been discussed previously in this preamble. The modification to this section is to the reference to subpart I of part 270. The part 270 requirements formerly in proposed Subpart I are finalized as part 270 subpart J. Also, the term "TSD" is added, for reasons described previously for § 270.1(b).

### B. RCRA Standardized Permits for Storage and Treatment Units

This part of the preamble discusses the new part 270 subpart J requirements for RCRA Standardized Permits for Storage and Treatment Units, originally proposed as part 270 subpart I.

#### 1. General Information About Standardized Permits

##### a. What Is a RCRA Standardized Permit?

The language in § 270.250 is finalized as proposed. No significant comments were received on this section

##### b. Who Is Eligible for a Standardized Permit?

The language in § 270.255 is finalized with changes to what facilities are eligible for the standardized permit. Eligibility was discussed earlier in this preamble in Section II.D.

##### c. What Requirements of Part 270 Apply to a Standardized Permit?

The language of § 270.260 is finalized as proposed. No significant comments were received on this section.

#### 2. Applying for a Standardized Permit

##### a. How Do I Apply for a Standardized Permit?

Applying for a standardized permit is discussed earlier in this preamble (see Section III.A. for further discussion). The language of § 270.270 is finalized as proposed. No significant comments were received on this section.

##### b. What Information Must I Submit to the Permitting Agency To Support My Standardized Permit?

Section 270.275 lists the information that must be submitted to the permitting agency in support of the standardized permit. The final rule adds additional items to this section. These items are the closure plan, documentation demonstrating financial assurance for closure, and, for eligible facilities receiving wastes from off-site, a waste analysis plan, and documentation that the off-site and the receiving facility are under the same ownership. We received comments on the need for submitting a closure plan with the Notice of Intent, rather than 180 days prior to closure. (See preamble section IV.H.3.) The closure cost estimates and financial assurance for closure requirements are further discussed in the preamble in section IV.I. One commenter suggested adding to § 270.275 language providing for an optional submission of information detailing suggested specifications for supplemental terms and conditions, if any, that the owner or operator of the facility, would like the

Director to consider including in their supplemental portion of the standardized permit. A voluntary submission of information was also discussed in the proposed preamble of the proposed rule (see 66 FR 52202, section IV.A.1.). We chose not to include applicable language in the regulatory section, because there is nothing that would prevent the owner/operator of the facility from suggesting such supplemental terms and conditions in their submission.

##### c. What Are the Certification Requirements?

The signed certification, pursuant to § 270.280, documents the facility owner/operator's compliance with the requirements of part 267. The signed certification is based upon a compliance audit performed either by or for the facility owner/operator.

Proposed § 270.280(a)(ii) is being changed to reflect our intent that a facility (in the case of an existing facility) be in compliance at the time they submit their Notice of Intent, and that if a facility is not in compliance with part 267, based upon their audit and certifications, it should not submit its Notice of Intent until it comes into compliance, and in the case of new facilities, that they be designed and constructed to comply. The new language will read: "Has been designed, and will be constructed and operated to comply with all applicable requirements of 40 CFR part 267, and will continue to comply until expiration of the permit." The facility's audit may either be a self or third party audit. (See section III.A.1.b. of this preamble for a discussion on compliance audit comments.)

#### 3. Conducting Compliance Audits

The following section provides information to assist owners/operators who are seeking a standardized permit to conduct compliance audits, as required by part 270.275(f). Compliance audits may be conducted by either the applicant or a third party.

a. Section 270.275(f) requires the standardized permit applicant to submit to the permitting authority an audit of the facility's compliance status with 40 CFR part 267. When conducting this audit, the auditor may consult the Protocol for Conducting Environmental Compliance Audits of Treatment, Storage and Disposal Facilities under the Resource Conservation and Recovery Act, EPA-305-B-98-006 (December 1998). You will find that protocol at the following web address: <http://www.epa.gov/compliance/incentives/auditing/protocol.html>. In

addition, the auditor may consult Procedures for Conducting Compliance Audit Required by 40 CFR 270.275(f). This document is located in the Docket, as well as on the web site described in paragraph (b) below.

b. The audit must address all the requirements of part 267 that apply to the facility. The auditor may develop a site specific audit protocol or inspection checklist to be used while conducting the audit. Sample audit checklists can be found at the following web address: <http://www.epa.gov/epaoswer/hazwaste/permit/epmt/toolperm.htm>.

c. The person conducting the audit should of course have appropriate training for conducting the audit. The auditor should have a working process knowledge of the facility or of another facility with similar operations, and should have a working knowledge of the proposed 40 CFR part 267 requirements that apply to the facility.

d. The results of the audit (*i.e.*, an audit report) must be prepared documenting compliance with the applicable requirements of part 267. The audit report must be signed and certified by the auditor as accurate. The final rule adds language to § 270.280(c) clarifying that the audit (audit report) must be signed and certified by the auditor as accurate prior to submitting to the Director with the Notice of Intent.

#### 4. What Information Must Be Kept at the Facility

The informational requirements of § 270.290 through § 270.320 are finalized as proposed, except for the portions of § 270.290 noted below.

a. Regarding proposed § 270.290(d), because we are not allowing a waiver for security provisions, the last phrase of proposed § 270.290(d) regarding the waiver is omitted in the final rule.

b. Because we are requiring a closure plan to be submitted with the Notice of Intent, we are omitting proposed § 270.290(m).

One commenter noted that, while we included requirements for information that must be kept on site for tanks and containers, we did not include a similar requirement for containment buildings. The requirements for what information must be kept on site for tanks and containers were based on the previously existing part 270 part B requirements for these units. When the requirements for containment buildings were finalized (57 FR 37265, August 18, 1992), a section detailing the part B informational requirements for those units was not provided. Therefore, in the standardized permit rule, a section in part 270 on containment buildings was not provided. In deciding what

information should be kept on site, the facility should maintain information related to the part 267 containment building requirements.

## VI. State Authorization

### A. Applicability of the Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. 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 programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (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 of State Authorization

Today's rule finalizes regulations that are not promulgated under the authority of HSWA. Thus, the standards finalized today are applicable on the effective date only in those states that do not have final authorization. Moreover, authorized states are required to modify their program 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 rule however, is considered to be neither more nor less stringent than the current standards. Therefore, authorized states are not required to modify their programs to adopt regulations consistent with and equivalent to today's final standards.

Because the Agency believes that the changes promulgated today will make the permitting program more efficient and save time, EPA strongly encourages States to adopt and seek authorization for this rule as soon as possible. EPA also encourages States to begin implementing this rule as soon as it is allowable under State law, while the RCRA authorization process proceeds.<sup>5</sup> Note that the requirements in today's rule are not less stringent than the previous federal standards.

As in the case of individual permit procedures, a State that chooses to adopt and request authorization for issuing standardized permits must adopt permitting procedures equivalent, but not necessarily identical to those promulgated by EPA. The authorization regulations in 40 CFR 271.14 list several provisions of the permitting regulations which EPA determined are necessary for an equivalent permitting program. States would need to adopt a similar scope of legal authorities for issuing standardized permits as for individual permits.

<sup>5</sup> EPA encourages States to take this approach for federal requirements where rapid implementation is important. For example, EPA encouraged States to implement State Corrective Action Management Unit Regulations, once adopted as a matter of State law, prior to authorization (see 58 FR 8677, February 16, 1993).

## VII. Regulatory Assessments

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] we must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that this proposed rule is a "significant regulatory action" because it raises novel legal or policy issues. As such, we submitted this action to OMB for review before publishing it in the **Federal Register**. Changes made in response to OMB suggestions or recommendations are documented in the public record in support of this final rule.

#### 1. Assessment of Potential Costs and Benefits

For regulations that are projected to have significant economic impacts, agencies are required to conduct a "Regulatory Impact Assessment" of potential costs and benefits of the regulation. Although OMB has not designated this rule as economically significant, we have completed an economic analysis of it (available to the public from the EPA docket at <http://www.epa.gov/edocket>), the results of which we summarize below.

a. Description of entities to which this rule applies. This rule potentially applies to approximately 870 to 1,130 existing private sector and Federal facilities which non-thermally treat and/or store RCRA hazardous waste in tanks, containers, and containment buildings either "on-site" (*i.e.*, at the waste generator site), or at "off-site" facilities that receive waste from off-site, provided that the company/institution is under the same ownership. Eligible

facilities may voluntarily participate in the RCRA standardized permit program. We designed the final rule to reduce the paperwork reporting burden for eligible facilities, as well as to reduce EPA and state administrative review time for these permit activities. Eligible facilities are a mix of small, medium and large facilities.

b. Description of potential impacts of this rule. The RCRA standardized permit rule is designed to streamline the regulatory burden to EPA/states, as well as to private sector and Federal facilities covered by the rule, by reducing the amount of information collected, submitted and reviewed for RCRA permit actions (*i.e.*, new RCRA permit applications, RCRA permit modifications, and RCRA permit renewals). Our economic analysis presents monetary estimates of the future average annual impact expected for five potential impact categories: (1) Paperwork burden reduction, (2) benefits and costs associated with changes to closure financial assurance (three-year pay-in period, financial ratio test, and independent financial audit report), (3) cost for facility certification audit, (4) improvement in financial return on waste management capital assets and investments, and (5) potential reduction in state hazardous waste fees paid by eligible facilities for RCRA permitting.

Based on our economic analysis, we estimate potential average annual cost savings to between 870 to 1,130 eligible facilities of \$100 to \$20,800 per permit action (*i.e.*, between 2 to 480 paperwork burden hours reduction per permit action), which represents a 4% to 40% reduction in burden hours compared to the conventional RCRA permit process. The extent of reduction depends on the type of permit action (*i.e.* new or interim status permits, conversion of existing permits, permit renewals, or permit modifications), and the type of eligible waste management unit (*i.e.* tank, container, or containment building). We estimate an average of 55% of annual permit actions will involve container systems, 43% will involve tank systems (although some small fraction of tanks may be ineligible in-ground and under-ground tanks), and 2% containment buildings. Aggregated over a future 30-year average annual 166 to 202 RCRA standardized permit actions (11% of which are expected to consist of conversion of existing permits, 61% of interim status and new facility permit applications, 18% modification permit applications, and 10% permit renewal applications upon expiration), produces an expected national paperwork cost savings benefit of \$1.3 million to \$3.4

million annually. This annual savings consists of 35% to 94% of benefits to eligible facilities, and 6% to 65% of benefits to EPA/state permit authorities (numerical ranges reflect two alternative estimation methods). Potential cost savings benefits are incremental to the average annual cost associated with the current (conventional) RCRA permitting process.

In addition to paperwork burden savings, our economic analysis also estimates \$0.01 million to \$0.12 million in average annual potential improvement in financial return to eligible hazardous waste management capital assets and investments (*i.e.* tanks, containers, and containment buildings), from expediting by 2.5 to 28 months per permit action, the time required for the RCRA permitting process. We also estimate a potential net annual cost of \$0.03 million to \$0.04 million associated with changes to closure financial assurance, and potential annual costs of \$0.005 million (if self-audit) to \$2.6 million (if third-party audit) for the certification audit. Taking both benefits and added costs into consideration, we estimate the net annual economic impact of the rule at \$2.8 to \$3.5 million in potential annual paperwork burden cost savings. In addition, we estimate a potential reduction of \$7.2 to \$8.8 million per year in hazardous waste permitting fees paid by eligible facilities to state governments, which represents a "transfer payment" impact, rather than a real resource "economic impact," to avoid double-counting state government paperwork burden impacts in our analysis. This does not necessarily translate into a net revenue loss to state governments, as states may beneficially reallocate these annual administrative resources to other revenue-generating activities. From the perspective of eligible facilities, the potential reduction in state fees added to the net reduction in annual costs to facilities associated with RCRA hazardous waste permits, provides a potential annual regulatory relief to eligible facilities of \$10.0 million to \$12.3 million per year.

These impact estimates represent hypothetical adoption of this rule by all state governments. However, the net benefits of the rule may be less than estimated because not all states may act immediately to change their state laws in order to adopt the standardized permit. Such an assumption is unlikely to occur in practice because (1) it will take states some time to change their laws, and (2) some states may choose not to adopt the EPA rule. For example, five states (AR, GA, MI, TN, WA) oppose offsite facility eligibility based

on state government comments to the October 2001 proposed rule. These five states accounted for 64 (11%) of the 595 offsite facility universe in the 2001 RCRA Biennial Report count of waste management facilities (*i.e.* facilities which received RCRA hazardous waste shipments from offsite). If these five states do not adopt the off-site portion of this voluntary rule, it will result in an 11% smaller net benefit estimate for this final rule.

#### B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0182.

Section 270.275 requires that applicants for a standardized permit submit to the permitting agency a Notice of Intent that will be used as the basis of the standardized permit application. This information includes:

The Part A permit application required by § 270.13;

A summary of the pre-application public meeting and other materials required by § 124.31;

Documentation of compliance with the location standards of §§ 267.18 and 270.14(b)(11);

Information that allows the Director to carry out his obligations under other Federal laws required in § 270.3;

A closure plan as described in § 267.112;

Solid waste management unit information required by § 270.14(d);

For facilities managing wastes generated off-site, a copy of the waste analysis plan;

For facilities managing wastes generated off-site, documentation showing that the waste generator and the receiving facility are under the same ownership;

A signed certification of the facility's compliance with part 267, as specified at Section. 270.280 and an audit report of the facility's current compliance status; and;

The most recent closure cost estimate and a copy of the documentation required to demonstrate financial responsibility.

EPA needs this information to comprehensively evaluate the potential risk posed by facilities seeking permits. This information aids EPA in meeting its goal of ascertaining and minimizing risks to human health and the environment from hazardous waste management facilities.

In addition, facilities that store or treat hazardous waste under a

standardized permit must keep at their facilities general types of information (§ 267.290), as well as unit-specific information for containers (§ 267 Subpart I), tanks (§ 267 Subpart J), and containment buildings (§ 267 Subpart DD), equipment subject to part 264, subpart BB (§ 270.310), and tanks, containers and containment buildings subject to part 264, subpart CC (§ 270.315). EPA anticipates that the owner or operator will use this information to ensure that tanks, containers, containment buildings, and other equipment are in good condition, that operating requirements are being satisfied, and to prevent placing in proximity wastes that are incompatible with other wastes that are likely to ignite or explode. These requirements contribute to EPA's goal of insuring that hazardous waste management facilities are operated in a manner fully protective of human health and the environment. Information collection requirements in the standardized permit rule are authorized by sections 2002 and 3007 of RCRA, as amended. In particular, section 2002 gives the Administrator the authority to promulgate such regulations as are necessary to carry out the functions of this subchapter. Section 3007 gives EPA the authority to compel anyone who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes to "furnish information related to such wastes" and make such information available to the government for "the purposes of \* \* \* enforcing the provisions of this chapter." EPA believes the information collection requirements in this rule are consistent with the Agency's responsibility to protect human health and the environment.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that would be requested pursuant to the proposed information collection requirements. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108. Further, no questions of a sensitive nature are included in the proposed information collection requirements.

EPA estimates that a future 3-year average annual 175 (permitted, interim status, and new) on-site captive TSDFs

per year will apply for a RCRA standardized permit in the years after its implementation (not counting a small additional amount of eligible federal facilities which are excluded from ICRs). The Agency has not estimated the burden for eligible off-site facilities. In the ICR, EPA estimates average annual respondent burden to be about 14,400 hours at an annual cost of \$1.42 million, and average annual agency (EPA/state) burden to be about 11,200 hours at an annual cost of \$0.58 million (which on a combined bases totals 25,600 hours/year at \$2.0 million/year). Assuming each eligible TSDF responds once annually (*i.e.* process a RCRA permit action), the average burden per response would be 82 hours. It is important to note that these ICR burden estimates are absolute magnitudes, not incremental; *i.e.* these estimates do not net-out the baseline burden of the existing conventional RCRA permitting process, as was done in the economic analysis summarized a few sections above.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information 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 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 Administration's (SBA) 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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The final rule is expected to provide net annual benefits (in the form of administrative paperwork burden reduction cost savings) from the voluntary participation by eligible facilities in the private sector. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities eligible for the rule.

#### *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 UMRA, we 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 which must have a written statement, 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 us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes an explanation with the final rule. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop, 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not authorized for the RCRA program and therefore will not be implementing these rules.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This final rule 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. Rather, it would provide more flexibility for States to implement already-existing requirements in the RCRA permitting program. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

#### *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, November 9, 2000), 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 final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There is no impact to tribal governments as a result of the standardized permit. Thus, Executive Order 13175 does not apply to this rule.

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

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pubic Law 104-113, section 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. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not establish any new technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

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

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and the National Environmental Justice Advisory Council, we have initiated efforts to incorporate environmental justice into our policies and programs. We are committed to addressing environmental justice concerns and

have assumed a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. Our goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of our policies, programs, and activities, and that all people live in clean and sustainable communities. To address this goal, we considered the impacts of this rule on low-income populations and minority populations.

We concluded that today's final rule will meet environmental justice goals because the public involvement process set forth in today's rule provides the opportunity for all potentially affected segments of the population to participate in public hearings and/or to provide comment on health and environmental concerns that may arise pursuant to a permitting action.

*K. The 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 required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule 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 rule will be effective 30 days after publication in the **Federal Register**.

**VIII. List of References**

1. RCRA Standardized Permit Rule Response to Comments Document. EPA Office of Solid Waste, Permits and State Programs Division. March 2005.
2. RCRA Part A Application. EPA/8700-23, May 2002.
3. Economics Background Document: Estimate of Potential National Regulatory Cost Savings for USEPA's RCRA Hazardous Waste Management "Standardized" Permit Final Rule, EPA Office of Solid Waste, Economics, Methods & Risk Analysis Division, March 29, 2005.
4. Protocol for Conducting Environmental Compliance Audits of Treatment, Storage and Disposal Facilities under the Resource Conservation and Recovery Act, EPA-305-B-98-006 (December 1998).
5. Procedures for Conducting Compliance Audit Required by 40 CFR 270.275(f). EPA

Office of Enforcement and Compliance Assurance.

**List of Subjects**

*40 CFR Part 124*

Administrative practice and procedure, Hazardous waste, RCRA permits.

*40 CFR Part 260*

Hazardous waste management system.

*40 CFR Part 261*

Identification and listing of hazardous waste.

*40 CFR Part 267*

Corrective action, Financial assurance, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements, Standardized permit requirements.

*40 CFR Part 270*

Administrative practice and procedure, Hazardous waste, Incorporation by reference, Permit application and modification procedures, RCRA permits, Standardized permit requirements.

Dated: July 28, 2005.

Stephen L. Johnson,  
Administrator.

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

**PART 124—PROCEDURES FOR DECISION MAKING**

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

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

■ 2. Section 124.1 is amended by revising paragraph (b) to read as follows:

**§ 124.1 Purpose and scope.**

\* \* \* \* \*

(b) Part 124 is organized into five subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these provisions. Subparts B through D and Subpart G supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for

administrative appeal of the final permit decisions. Subpart B contains public participation requirements applicable to all RCRA hazardous waste management facilities. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D contains specific procedural requirements for NPDES permits. Subpart G contains specific procedural requirements for RCRA standardized permits, which, in some instances, change how the General Program Requirements of subpart A apply in the context of the RCRA standardized permit.

\* \* \* \* \*

■ 3. Section 124.2 is amended by revising the definition of "Permit" in paragraph (a) and adding a definition for a "Standardized permit" in alphabetical order to read as follows:

**§ 124.2 Definitions.**

(a) \* \* \*

*Permit* means an authorization, license or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and parts 122, 123, 144, 145, 233, 270, and 271 of this chapter. "Permit" includes RCRA "permit by rule" (§ 270.60), RCRA standardized permit (§ 270.67), UIC area permit (§ 144.33), NPDES or 404 "general permit" (§§ 270.61, 144.34, and 233.38). Permit does not include RCRA interim status (§ 270.70), UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

\* \* \* \* \*

*Standardized permit* means a RCRA permit authorizing management of hazardous waste issued under subpart G of this part and part 270, subpart J. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.

\* \* \* \* \*

■ 4. Section 124.5 is amended by revising paragraph (c)(1) to read as follows:

**§ 124.5 Modification, revocation and reissuance, or termination of permits.**

\* \* \* \* \*

(c) (*Applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)*). (1) If the Director tentatively decides to modify or revoke and reissue a permit under 40 CFR 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 (other than § 270.41(b)(3)) or § 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the

proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, other than under 40 CFR 270.41(b)(3), the Director shall require the submission of a new application. In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the Director and the permittee shall comply with the appropriate requirements in 40 CFR part 124, subpart G for RCRA standardized permits.

\* \* \* \* \*

■ 5. Section 124.31 is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 124.31 Pre-application public meeting and notice.**

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section shall also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 part 270, subpart J), including renewal of a standardized permit for such units, where the renewal is proposing a significant change in facility operations, as defined at § 124.211(c). The requirements of this section 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.

(b) Prior to the submission of a part B RCRA permit application for a facility, or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J), the applicant must hold at least one meeting with the public 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.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b), or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J).

\* \* \* \* \*

■ 6. Section 124.32 is amended by revising paragraph (a) to read as follows:

**§ 124.32 Public notice requirements at the application stage.**

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR part 270, subpart J)). The requirements of this section also 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.

\* \* \* \* \*

■ 7. Subpart G is added to read as follows:

**Subpart G—Procedures for RCRA Standardized Permit**

**General Information About Standardized Permits**

Sec.

124.200 What is a RCRA standardized permit?

124.201 Who is eligible for a standardized permit?

**Applying for a Standardized Permit**

- 124.202 How do I as a facility owner or operator apply for a standardized permit?
- 124.203 How may I switch from my individual RCRA permit to a standardized permit?

**Issuing a Standardized Permit**

- 124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?
- 124.205 What must I do as the Director of the regulatory agency to prepare a final standardized permit?
- 124.206 In what situations may I require a facility owner or operator to apply for an individual permit?

**Opportunities for Public Involvement in the Standardized Permit Process**

- 124.207 What are the requirements for public notices?
- 124.208 What are the opportunities for public comments and hearings on draft permit decisions?
- 124.209 What are the requirements for responding to comments?
- 124.210 May I, as an interested party in the permit process, appeal a final standardized permit?

**Maintaining a Standardized Permit**

- 124.211 What types of changes may I make to my standardized permit?
- 124.212 What procedures must I follow to make routine changes?
- 124.213 What procedures must I follow to make routine changes with prior approval?
- 124.214 What procedures must I follow to make significant changes?

**Subpart G—Procedures for RCRA Standardized Permit****General Information About Standardized Permits****§ 124.200 What is a RCRA standardized permit?**

The standardized permit is a special form of RCRA permit, that may consist of two parts: A uniform portion that the Director issues in all cases, and a supplemental portion that the Director issues at his or her discretion. We formally define the term "Standardized permit" in § 124.2.

(a) What comprises the uniform portion? The uniform portion of a standardized permit consists of terms and conditions, relevant to the unit(s) you are operating at your facility, that EPA has promulgated in 40 CFR part 267 (Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit). If you intend to operate under the standardized permit, you must comply with these nationally applicable terms and conditions.

(b) What comprises the supplemental portion? The supplemental portion of a

standardized permit consists of site-specific terms and conditions, beyond those of the uniform portion, that the Director may impose on your particular facility, as necessary to protect human health and the environment. If the Director issues you a supplemental portion, you must comply with the site-specific terms and conditions it imposes.

(1) When required under § 267.101, provisions to implement corrective action will be included in the supplemental portion.

(2) Unless otherwise specified, these supplemental permit terms and conditions apply to your facility in addition to the terms and conditions of the uniform portion of the standardized permit and not in place of any of those terms and conditions.

**§ 124.201 Who is eligible for a standardized permit?**

(a) You may be eligible for a standardized permit if:

(1) You generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings; or

(2) You receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then you store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

(3) In either case, the Director will inform you of your eligibility when a decision is made on your permit.

(b) [Reserved]

**Applying for a Standardized Permit****§ 124.202 How do I as a facility owner or operator apply for a standardized permit?**

(a) You must follow the requirements in this subpart as well as those in § 124.31, 40 CFR 270.10, and 40 CFR part 270, subpart J.

(b) You must submit to the Director a written Notice of Intent to operate under the standardized permit. You must also include the information and certifications required under 40 CFR part 270, subpart J.

**§ 124.203 How may I switch from my individual RCRA permit to a standardized permit?**

Where all units in the RCRA permit are eligible for the standardized permit, you may request that your individual permit be revoked and reissued as a standardized permit, in accordance with § 124.5. Where only some of the units in the RCRA permit are eligible for the standardized permit, you may request that your individual permit be modified to no longer include those units and

issue a standardized permit for those units in accordance with § 124.204.

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

(a) You must review the Notice of Intent and supporting information submitted by the facility owner or operator.

(b) You must determine whether the facility is or is not eligible to operate under the standardized permit.

(1) If the facility is eligible for the standardized permit, you must propose terms and conditions, if any, to include in a supplemental portion. If you determine that these terms and conditions are necessary to protect human health and the environment and cannot be imposed, you must tentatively deny coverage under the standardized permit.

(2) If the facility is not eligible for the standardized permit, you must tentatively deny coverage under the standardized permit. Cause for ineligibility may include, but is not limited to, the following:

(i) Failure of owner or operator to submit all the information required under § 270.275.

(ii) Information submitted that is required under § 270.275 is determined to be inadequate.

(iii) Facility does not meet the eligibility requirements (activities are outside the scope of the standardized permit).

(iv) Demonstrated history of significant non-compliance with applicable requirements.

(v) Permit conditions cannot ensure protection of human health and the environment.

(c) You must prepare your draft permit decision within 120 days after receiving the Notice of Intent and supporting documents from a facility owner or operator. Your tentative determination under this section to deny or grant coverage under the standardized permit, including any proposed site-specific conditions in a supplemental portion, constitutes a draft permit decision. You are allowed a one time extension of 30 days to prepare the draft permit decision. When the use of the 30-day extension is anticipated, you should inform the permit applicant during the initial 120-day review period. Reasons for an extension may include, but is not limited to, needing to complete review of submissions with the Notice of Intent (e.g., closure plans, waste analysis plans, for facilities seeking to manage hazardous waste generated off-site).

(d) Many requirements in subpart A of this part apply to processing the standardized permit application and preparing your draft permit decision. For example, your draft permit decision must be accompanied by a statement of basis or fact sheet and must be based on the administrative record. In preparing your draft permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

(1) Section 124.1 Purpose and Scope. All paragraphs.

(2) Section 124.2 Definitions. All paragraphs.

(3) Section 124.3 Application for a permit. All paragraphs, except paragraphs (c), (d), (f), and (g) of this section apply.

(4) Section 124.4 Consolidation of permit processing. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(5) Section 124.5 Modification, revocation and re-issuance, or termination of permits. Not applicable.

(6) Section 124.6 Draft permits. This section does not apply to the RCRA standardized permit; procedures in this subpart apply instead.

(7) Section 124.7 Statement of basis. The entire section applies.

(8) Section 124.8 Fact sheet. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(9) Section 124.9 Administrative record for draft permits when EPA is the permitting authority. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to draft permits is § 24.204(c) instead of § 124.6.

(10) Section 124.10 Public notice of permit actions and public comment period. Only §§ 124.10(c)(1)(ix) and (c)(1)(x)(A) apply to the RCRA standardized permit. Most of § 124.10 does not apply to the RCRA standardized permit; §§ 124.207, 124.208, and 124.209 apply instead.

**§ 124.205 What must I do as the Director of the regulatory agency to prepare a final standardized permit?**

As Director of the regulatory agency, you must consider all comments received during the public comment period (see § 124.208) in making your final permit decision. In addition, many requirements in subpart A of this part apply to the public comment period, public hearings, and preparation of your final permit decision. In preparing a

final permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

(a) Section 124.1 Purpose and Scope. All paragraphs.

(b) Section 124.2 Definitions. All paragraphs.

(c) Section 124.11 Public comments and requests for public hearings. This section does not apply to the RCRA standardized permit; the procedures in § 124.208 apply instead.

(d) Section 124.12 Public hearings. Paragraphs (b), (c), and (d) apply.

(e) Section 124.13 Obligation to raise issues and provide information during the public comment period. The entire section applies; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(f) Section 124.14 Reopening of the public comment period. All paragraphs apply; however, in the context of the RCRA standardized permit, use the following reference: in § 124.14(b)(1) use reference to § 124.204 instead of § 124.6; in § 124.14(b)(3) use reference to § 124.208 instead of § 124.10; in § 124.14(c) use reference to § 124.207 instead of § 124.10.

(g) Section 124.15 Issuance and effective date of permit. All paragraphs apply, however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(h) Section 124.16 Stays of contested permit conditions. All paragraphs apply.

(i) Section 124.17 Response to comments. This section does not apply to the RCRA standardized permit; procedures in § 124.209 apply instead.

(j) Section 124.18 Administrative record for final permit when EPA is the permitting authority. All paragraphs apply, however, use reference to § 124.209 instead of § 124.17.

(k) Section 124.19 Appeal of RCRA, UIC, NPDES, and PSD permits. All paragraphs apply.

(l) Section 124.20 Computation of time. All paragraphs apply.

**§ 124.206 In what situations may I require a facility owner or operator to apply for an individual permit?**

(a) Cases where you may determine that a facility is not eligible for the standardized permit include, but are not limited to, the following:

(1) The facility does not meet the criteria in § 124.201.

(2) The facility has a demonstrated history of significant non-compliance with regulations or permit conditions.

(3) The facility has a demonstrated history of submitting incomplete or

deficient permit application information.

(4) The facility has submitted an incomplete or inadequate materials with the Notice of Intent.

(b) If you determine that a facility is not eligible for the standardized permit, you must inform the facility owner or operator that they must apply for an individual permit.

(c) You may require any facility that has a standardized permit to apply for and obtain an individual RCRA permit. Any interested person may petition you to take action under this paragraph. Cases where you may require an individual RCRA permit include, but are not limited to, the following:

(1) The facility is not in compliance with the terms and conditions of the standardized RCRA permit.

(2) Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

(d) You may require any facility authorized by a standardized permit to apply for an individual RCRA permit only if you have notified the facility owner or operator in writing that an individual permit application is required. You must include in this notice a brief statement of the reasons for your decision, a statement setting a deadline for the owner or operator to file the application, and a statement that, on the effective date of the individual RCRA permit, the facility's standardized permit automatically terminates. You may grant additional time upon request from the facility owner or operator.

(e) When you issue an individual RCRA permit to an owner or operator otherwise subject to a standardized RCRA permit, the standardized permit for their facility will automatically cease to apply on the effective date of the individual permit.

**Opportunities for Public Involvement in the Standardized Permit Process**

**§ 124.207 What are the requirements for public notices?**

(a) You, as the Director, must provide public notice of your draft permit decision and must provide an opportunity for the public to submit comments and request a hearing on that decision. You must provide the public notice to:

(1) The applicant;

(2) Any other agency which you know has issued or is required to issue a RCRA permit for the same facility or

activity (including EPA when the draft permit is prepared by the State);

(3) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States;

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

(5) To any units of 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.

(b) You must issue the public notice according to the following methods:

(1) Publication in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

(2) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; and

(3) Any other method reasonably calculated to give actual notice of the draft permit decision to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(c) You must include the following information in the public notice:

(1) The name and telephone number of the contact person at the facility.

(2) The name and telephone number of your contact office, and a mailing address to which people may direct comments, information, opinions, or inquiries.

(3) An address to which people may write to be put on the facility mailing list.

(4) The location where people may view and make copies of the draft standardized permit and the Notice of Intent and supporting documents.

(5) A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice.

(6) The date that the facility owner or operator submitted the Notice of Intent and supporting documents.

(d) At the same time that you issue the public notice under this section, you must place the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the Notice of Intent and supporting documents, and the statement of basis or fact sheet in a

location accessible to the public in the vicinity of the facility or at your office.

**§ 124.208 What are the opportunities for public comments and hearings on draft permit decisions?**

(a) The public notice that you issue under § 124.207 must allow at least 45 days for people to submit written comments on your draft permit decision. This time is referred to as the public comment period. You must automatically extend the public comment period to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(b) During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing. If someone wants to request a public hearing, they must submit their request in writing to you. Their request must state the nature of the issues they propose to raise during the hearing.

(c) You must hold a public hearing whenever you receive a written notice of opposition to a standardized permit and a request for a hearing within the public comment period under paragraph (a) of this section. You may also hold a public hearing at your discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(d) Whenever possible, you must schedule a hearing under this section at a location convenient to the nearest population center to the facility. You must give public notice of the hearing at least 30 days before the date set for the hearing. (You may give the public notice of the hearing at the same time you provide public notice of the draft permit, and you may combine the two notices.)

(e) You must give public notice of the hearing according to the methods in § 124.207(a) and (b). The hearing must be conducted according to the procedures in § 124.12(b), (c), and (d).

(f) In their written comments and during the public hearing, if held, interested parties may provide comments on the draft permit decision. These comments may include, but are not limited to, the facility's eligibility for the standardized permit, the tentative supplemental conditions you proposed, and the need for additional supplemental conditions.

**§ 124.209 What are the requirements for responding to comments?**

(a) At the time you issue a final standardized permit, you must also respond to comments received during

the public comment period on the draft permit. Your response must:

(1) Specify which additional conditions (*i.e.*, those in the supplemental portion), if any, you changed in the final permit, and the reasons for the change.

(2) Briefly describe and respond to all significant comments on the facility's ability to meet the general requirements (*i.e.*, those terms and conditions in the uniform portion) and on any additional conditions necessary to protect human health and the environment raised during the public comment period or during the hearing.

(3) Make the comments and responses accessible to the public.

(b) You may request additional information from the facility owner or operator or inspect the facility if you need additional information to adequately respond to significant comments or to make decisions about conditions you may need to add to the supplemental portion of the standardized permit.

(c) If you are the Director of an EPA permitting agency, you must include in the administrative record for your final permit decision any documents cited in the response to comments. If new points are raised or new material supplied during the public comment period, you may document your response to those matters by adding new materials to the administrative record.

**§ 124.210 May I, as an interested party in the permit process, appeal a final standardized permit?**

You may petition for administrative review of the Director's final permit decision, including his or her decision that the facility is eligible for the standardized permit, according to the procedures of § 124.19. However, the terms and conditions of the uniform portion of the standardized permit are not subject to administrative review under this provision.

**Maintaining a Standardized Permit**

**§ 124.211 What types of changes may I make to my standardized permit?**

You may make both routine changes, routine changes with prior Agency approval, and significant changes. For the purposes of this section:

(a) "Routine changes" are any changes to the standardized permit that qualify as a class 1 permit modification (without prior Agency approval) under 40 CFR 270.42, Appendix I, and

(b) "Routine changes with prior Agency approval" are for those changes to the standardized permit that would qualify as a class 1 modification with prior agency approval, or a class 2

permit modification under 40 CFR 270.42, Appendix I; and

(c) "Significant changes" are any changes to the standardized permit that:

(1) Qualify as a class 3 permit modification under 40 CFR 270.42, Appendix I;

(2) Are not explicitly identified in 40 CFR 270.42, Appendix I; or

(3) Amend any terms or conditions in the supplemental portion of your standardized permit.

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

(a) You can make routine changes to the standardized permit without obtaining approval from the Director. However, you must first determine whether the routine change you will make amends the information you submitted under 40 CFR 270.275 with your Notice of Intent to operate under the standardized permit.

(b) If the routine changes you make amend the information you submitted under 40 CFR 270.275 with your Notice of Intent to operate under the standardized permit, then before you make the routine changes you must:

(1) Submit to the Director the revised information pursuant to 40 CFR 270.275(a); and

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

**§ 124.213 What procedures must I follow to make routine changes with prior approval?**

(a) Routine changes to the standardized permit with prior Agency approval may only be made with the prior written approval of the Director.

(b) You must also follow the procedures in § 124.212(b)(1)–(2).

**§ 124.214 What procedures must I follow to make significant changes?**

(a) You must first provide notice of and conduct a public meeting.

(1) Public Meeting. You must hold a meeting with the public to solicit questions from the community and inform the community of your proposed modifications to your hazardous waste management activities. You must post a sign-in sheet or otherwise provide a voluntary opportunity for people attending the meeting to provide their names and addresses.

(2) Public Notice. At least 30 days before you plan to hold the meeting, you must issue a public notice in accordance with the requirements of § 124.31(d).

(b) After holding the public meeting, you must submit a modification request to the Director that:

(1) Describes the exact change(s) you want and whether they are changes to information you provided under 40 CFR 270.275 or to terms and conditions in the supplemental portion of your standardized permit;

(2) Explain why the modification is needed; and

(3) Includes a summary of the public meeting under paragraph (a) of this section, along with the list of attendees and their addresses and copies of any written comments or materials they submitted at the meeting.

(c) Once the Director receives your modification request, he or she must make a tentative determination within 120 days to approve or disapprove your request. You are allowed a one time extension of 30 days to prepare the draft permit decision. When the use of the 30-day extension is anticipated, you should inform the permit applicant during the initial 120-day review period.

(d) After the Director makes this tentative determination, the procedures in § 124.205 and §§ 124.207 through 124.210 for processing an initial request for coverage under the standardized permit apply to making the final determination on the modification request.

**PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

■ 8. 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, and 6974.

■ 9. In § 260.10, the first sentence of paragraph (2) of the definition of "facility" is revised to read as follows:

**§ 260.10 Definitions.**

\* \* \* \* \*

*Facility* \* \* \*

\* \* \* \* \*

(2) For the purpose of implementing corrective action under 40 CFR 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. \* \* \*

\* \* \* \* \*

■ 9a. Sections 260.11(c)(1), (c)(3)(xxvii), and (d)(1) are revised to read as follows:

**§ 260.11 References.**

\* \* \* \* \*

(c) \* \* \*

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035, 265.1035, 270.24, 270.25, 270.310(d)(3).

\* \* \* \* \*

(3) \* \* \*

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.

\* \* \* \* \*

(d) \* \* \*

(1) "Flammable and Combustible Liquids Code" (1977 or 1981), IBR approved for §§ 264.198, 265.198, 267.202(b).

\* \* \* \* \*

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

■ 10. 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.

■ 11. Section 261.7(a)(1) is revised to read as follows:

**§ 261.7 Residues of hazardous waste in empty containers.**

(a)(1) Any hazardous waste remaining in either: (i) an empty container; or (ii) 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 265, 267, 268, 270, or 124 this chapter or to the notification requirements of section 3010 of RCRA.

\* \* \* \* \*

■ 12. Part 267 is added to read as follows:

**PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT**

**Subpart A—General**

Sec.

267.1 What are the purpose, scope and applicability of this part?

267.2 What is the relationship to interim status standards?

267.3 How does this part affect an imminent hazard action?

**Subpart B—General Facility Standards**

267.10 Does this subpart apply to me?

267.11 What must I do to comply with this subpart?

267.12 How do I obtain an identification number?

267.13 What are my waste analysis requirements?

267.14 What are my security requirements?

267.15 What are my general inspection requirements?

267.16 What training must my employees have?

267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?

267.18 What are the standards for selecting the location of my facility?

**Subpart C—Preparedness and Prevention**

- 267.30 Does this subpart apply to me?  
 267.31 What are the general design and operation standards?  
 267.32 What equipment am I required to have?  
 267.33 What are the testing and maintenance requirements for the equipment?  
 267.34 When must personnel have access to communication equipment or an alarm system?  
 267.35 How do I ensure access for personnel and equipment during emergencies?  
 267.36 What arrangements must I make with local authorities for emergencies?

**Subpart D—Contingency Plan and Emergency Procedures**

- 267.50 Does this subpart apply to me?  
 267.51 What is the purpose of the contingency plan and how do I use it?  
 267.52 What must be in the contingency plan?  
 267.53 Who must have copies of the contingency plan?  
 267.54 When must I amend the contingency plan?  
 267.55 What is the role of the emergency coordinator?  
 267.56 What are the required emergency procedures for the emergency coordinator?  
 267.57 What must the emergency coordinator do after an emergency?  
 267.58 What notification and recordkeeping must I do after an emergency?

**Subpart E Manifest System, Recordkeeping, Reporting, and Notifying**

- 267.70 Does this subpart apply to me?  
 267.71 Use of the manifest system.  
 267.72 Manifest discrepancies.  
 267.73 What information must I keep?  
 267.74 Who sees the records?  
 267.75 What reports must I prepare and to whom do I send them?  
 267.76 What notifications must I make?

**Subpart F—Releases from Solid Waste Management Units**

- 267.90 Who must comply with this section?  
 267.91–267.100 [Reserved]  
 267.101 What must I do to address corrective action for solid waste management units?

**Subpart G—Closure**

- 267.110 Does this subpart apply to me?  
 267.111 What general standards must I meet when I stop operating the unit?  
 267.112 What procedures must I follow?  
 267.113 Will the public have the opportunity to comment on the plan?  
 267.114 [Reserved]  
 267.115 After I stop operating, how long until I must close?  
 267.116 What must I do with contaminated equipment, structure, and soils?  
 267.117 How do I certify closure?

**Subpart H—Financial Requirements**

- 267.140 Who must comply with this subpart, and briefly, what do they have to do?

- 267.141 Definitions of terms as used in this subpart.  
 267.142 Cost estimate for closure.  
 267.143 Financial assurance for closure.  
 267.144–267.146 [Reserved]  
 267.147 Liability requirements.  
 267.148 Incapacity of owners or operators, guarantors, or financial institutions.  
 267.149 [Reserved]  
 267.150 State assumption of responsibility.  
 267.151 Wording of the instruments

**Subpart I—Use and Management of Containers**

- 267.170 Does this subpart apply to me?  
 267.171 What standards apply to the containers?  
 267.172 What are the inspection requirements?  
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**Authority:** 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

**Subpart A—General****§ 267.1 What are the purpose, scope and applicability of this part?**

(a) The purpose of this part is to establish minimum national standards which define the acceptable management of hazardous waste under a 40 CFR part 270, subpart J standardized permit.

(b) This part applies to owners and operators of facilities who treat or store hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided otherwise in 40 CFR part 261, subpart A, or 40 CFR 264.1(f) and (g).

**§ 267.2 What is the relationship to interim status standards?**

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

**§ 267.3 How does this part affect an imminent hazard action?**

Notwithstanding any other provisions of this part, enforcement actions may be brought pursuant to section 7003 of RCRA.

**Subpart B—General Facility Standards****§ 267.10 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

**§ 267.11 What must I do to comply with this subpart?**

To comply with this subpart, you must obtain an identification number, and follow the requirements below for waste analysis, security, inspections, training, special waste handling, and location standards.

**§ 267.12 How do I obtain an identification number?**

You must apply to EPA for an EPA identification number following the EPA notification procedures and using EPA form 8700-12. You may obtain information and required forms from your state hazardous waste regulatory agency or from your EPA regional office.

**§ 267.13 What are my waste analysis requirements?**

(a) Before you treat or store any hazardous wastes, you must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this part and 40 CFR part 268.

(1) You may include data in the analysis that was developed under 40 CFR part 261, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(2) You must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, you must repeat the analysis if the process or operation generating the hazardous wastes has changed.

(b) You must develop and follow a written waste analysis plan that describes the procedures you will follow to comply with paragraph (a) of this section. You must keep this plan at the facility. If you receive wastes generated from off-site, and are eligible for a standardized permit, you also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:

(1) The hazardous waste parameters that you will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section).

(2) The test methods you will use to test for these parameters.

(3) The sampling method you will use to obtain a representative sample of the waste to be analyzed. You may obtain a representative sample using either:

(i) One of the sampling methods described in appendix I of 40 CFR part 261; or

(ii) An equivalent sampling method.

(4) How frequently you will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

(5) Where applicable, the methods you will use to meet the additional waste analysis requirements for specific waste management methods as specified

in 40 CFR 264.17, 264.1034(d), 264.1063(d), and 264.1083.

**§ 267.14 What are my security requirements?**

(a) You must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of your facility.

(b) Your facility must have:

(1) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

(2) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

(3) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(c) You must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend "Danger—Unauthorized Personnel Keep Out." The legend must be in English and in any other language predominant in the area surrounding the facility (for example, facilities in counties bordering the Canadian province of Quebec must post signs in French, and facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. You may use existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

**§ 267.15 What are my general inspection requirements?**

(a) You must inspect your facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to:

(1) Release of hazardous waste constituents to the environment; or

(2) A threat to human health. You must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.

(b) You must develop and follow a written schedule for inspecting, monitoring equipment, safety and emergency equipment, security devices,

and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(1) You must keep this schedule at the facility.

(2) The schedule must identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).

(3) The frequency of your inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in §§ 267.174, 267.193, 267.195, 267.1103, and 40 CFR 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable.

(c) You must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, you must take remedial action immediately.

(d) You must record all inspections. You must keep these records for at least three years from the date of inspection. At a minimum, you must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

**§ 267.16 What training must my employees have?**

(a) Your facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. You must ensure that this program includes all the elements described in the documents that are required under paragraph (d)(3) of this section.

(1) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

(2) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

- (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment
- (ii) Key parameters for automatic waste feed cut-off systems.
- (iii) Communications or alarm systems.
- (iv) Response to fires or explosions.
- (v) Response to ground water contamination incidents.
- (vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of your standardized permit must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(d) You must maintain the following documents and records at your facility:

- (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
- (2) A written job description for each position listed under paragraph (d)(1) of this section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;
- (3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;
- (4) Records that document that facility personnel have received and completed the training or job experience required under paragraphs (a), (b), and (c) of this section.

(e) You must keep training records on current personnel until your facility closes. You must keep training records on former employees for at least three years from the date the employee last worked at your facility. Personnel training records may accompany personnel transferred within your company.

**§ 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?**

(a) You must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

(1) You must separate these wastes and protect them from sources of ignition or reaction such as: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

(2) While ignitable or reactive waste is being handled, you must confine smoking and open flames to specially designated locations.

(3) "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) If you treat or store ignitable or reactive waste, or mix incompatible waste or incompatible wastes and other materials, you must take precautions to prevent reactions that:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(4) Damage the structural integrity of the device or facility.

(5) Threaten human health or the environment in any similar way.

(c) You must document compliance with paragraph (a) or (b) of this section. You may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in § 267.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

**§ 267.18 What are the standards for selecting the location of my facility?**

(a) You may not locate portions of new facilities where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

(1) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(2) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(3) "Holocene" means the most recent epoch of the Quaternary period,

extending from the end of the Pleistocene to the present.

**Note to paragraph (a)(3):** Procedures for demonstrating compliance with this standard are specified in 40 CFR 270.14(b)(11). Facilities which are located in political jurisdictions other than those listed in appendix VI of 40 CFR part 264, are assumed to be in compliance with this requirement.

(b) If your facility is located in a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(1) "100-year flood plain" means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

(2) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(3) "100-year flood" means a flood that has a one percent chance of being equaled or exceeded in any given year.

**Subpart C—Preparedness and Prevention**

**§ 267.30 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

**§ 267.31 What are the general design and operation standards?**

You must design, construct, maintain, and operate your facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

**§ 267.32 What equipment am I required to have?**

Your facility must be equipped with all of the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals),

spill control equipment, and decontamination equipment.

(d) Water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

**§ 267.33 What are the testing and maintenance requirements for the equipment?**

You must test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

**§ 267.34 When must personnel have access to communication equipment or an alarm system?**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under § 267.32.

(b) If just one employee is on the premises while the facility is operating, that person must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under § 267.32.

**§ 267.35 How do I ensure access for personnel and equipment during emergencies?**

You must maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, as appropriate, considering the type of waste being stored or treated.

**§ 267.36 What arrangements must I make with local authorities for emergencies?**

(a) You must attempt to make the following arrangements, as appropriate, for the type of waste handled at your facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(2) Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency, and agreements with any others to provide support to the primary emergency authority.

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers.

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(b) If State or local authorities decline to enter into such arrangements, you must document the refusal in the operating record.

**Subpart D—Contingency Plan and Emergency Procedures**

**§ 267.50 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

**§ 267.51 What is the purpose of the contingency plan and how do I use it?**

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

(b) You must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**§ 267.52 What must be in the contingency plan?**

(a) Your contingency plan must:

(1) Describe the actions facility personnel will take to comply with §§ 267.51 and 267.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(2) Describe all arrangements agreed upon under § 267.36 by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 267.55), and you must

keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(4) Include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, you must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(5) Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. You must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(b) If you have already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan under 40 CFR part 112, or some other emergency or contingency plan, you need only amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this part.

**§ 267.53 Who must have copies of the contingency plan?**

(a) You must maintain a copy of the plan with all revisions at the facility; and

(b) You must submit a copy with all revisions to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

**§ 267.54 When must I amend the contingency plan?**

You must review, and immediately amend the contingency plan, if necessary, whenever:

(a) The facility permit is revised.

(b) The plan fails in an emergency.

(c) You change the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

(d) You change the list of emergency coordinators.

(e) You change the list of emergency equipment.

**§ 267.55 What is the role of the emergency coordinator?**

At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

**§ 267.56 What are the required emergency procedures for the emergency coordinator?**

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

(1) Activate internal facility alarm or communication systems, where applicable, to notify all facility personnel, and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must:

(1) Immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(2) Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

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

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials

decide whether local areas should be evacuated; and

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

(i) Name and telephone number of the reporter.

(ii) Name and address of facility.

(iii) Time and type of incident (for example, a release or a fire).

(iv) Name and quantity of material(s) involved, to the extent known.

(v) The extent of injuries, if any.

(vi) The possible hazards to human health or the environment outside the facility.

(d) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(e) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

**§ 267.57 What must the emergency coordinator do after an emergency?**

(a) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(b) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

**§ 267.58 What notification and recordkeeping must I do after an emergency?**

(a) You must notify the Regional Administrator, and appropriate State and local authorities, that the facility is in compliance with § 267.57(b) before operations are resumed in the affected area(s) of the facility.

(b) You must note the time, date, and details of any incident that requires

implementing the contingency plan in the operating record. Within 15 days after the incident, you must submit a written report on the incident to the Regional Administrator. You must include the following in the report:

(1) The name, address, and telephone number of the owner or operator.

(2) The name, address, and telephone number of the facility.

(3) The date, time, and type of incident (e.g., fire, explosion).

(4) The name and quantity of material(s) involved.

(5) The extent of injuries, if any.

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable.

(7) The estimated quantity and disposition of recovered material that resulted from the incident.

**Subpart E—Recordkeeping, Reporting, and Notifying****§ 267.70 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that stores or non-thermally treats a hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b). In addition, you must comply with the manifest requirements of 40 CFR part 262 whenever a shipment of hazardous waste is initiated from your facility.

**§ 267.71 Use of the manifest system.**

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest (as defined in § 267.72(a)) on each copy of the manifest;

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

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

(1) Sign and date each copy of the manifest or shipping paper (if the

manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in § 267.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. Note that the Agency does not intend that the owner or operator of a facility whose procedures under § 267.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 267.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator. Note that § 262.23(c) of this chapter requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment); and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of part 262 of this chapter. The Agency notes that the provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at

least three years from the date of signature.

#### § 267.72 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(1) For bulk waste, variations greater than 10 percent in weight; and

(2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

#### § 267.73 What information must I keep?

(a) You must keep a written operating record at your facility.

(b) You must record the following information, as it becomes available, and maintain the operating record until you close the facility:

(1) A description and the quantity of each type of hazardous waste generated, and the method(s) and date(s) of its storage and/or treatment at the facility as required by Appendix I of 40 CFR part 264;

(2) The location of each hazardous waste within the facility and the quantity at each location;

(3) Records and results of waste analyses and waste determinations you perform as specified in §§ 267.13, 267.17, and 40 CFR 264.1034, 264.1063, 264.1083, and 268.7;

(4) Summary reports and details of all incidents that require you to implement the contingency plan as specified in § 267.58(b));

(5) Records and results of inspections as required by § 267.15(d) (except you need to keep these data for only three years);

(6) Monitoring, testing or analytical data, and corrective action when required by subpart F of this part and §§ 267.191, 267.193, 267.195, and 40 CFR 264.1034(c) through 264.1034(f),

264.1035, 264.1063(d) through 264.1063(i), 264.1064, 264.1088, 264.1089, and 264.1090;

(7) All closure cost estimates under § 267.142;

(8) Your certification, at least annually, that you have a program in place to reduce the volume and toxicity of hazardous waste that you generate to the degree that you determine to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to you that minimizes the present and future threat to human health and the environment;

(9) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under 40 CFR 268.7; and

(10) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under 40 CFR 268.7.

(11) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(12) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8.

#### § 267.74 Who sees the records?

(a) You must furnish all records, including plans, required under this part upon the request of any officer, employee, or representative of EPA who is duly designated by the Administrator, and make them available at all reasonable times for inspection.

(b) The retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the Administrator.

#### § 267.75 What reports must I prepare and to whom do I send them?

You must prepare a biennial report and other reports listed in paragraph (b) of this section.

(a) Biennial report. You must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA form 8700-13B. The report must cover facility activities during the previous calendar year and must include:

(1) The EPA identification number, name, and address of the facility;

(2) The calendar year covered by the report;

(3) The method of treatment or storage for each hazardous waste;

(4) The most recent closure cost estimate under § 267.142;

(5) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste.

(6) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(7) The certification signed by you.

(b) Additional reports. In addition to submitting the biennial reports, you must also report to the Regional Administrator:

(1) Releases, fires, and explosions as specified in § 267.58(b);

(2) Facility closures specified in § 267.117; and

(3) As otherwise required by subparts I, J, and DD of this part and part 264, subparts AA, BB, CC.

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator.

#### § 267.76 What notifications must I make?

Before transferring ownership or operation of a facility during its operating life, you must notify the new owner or operator in writing of the requirements of this part and 40 CFR part 270, subpart J.

#### Subpart F—Releases from Solid Waste Management Units

##### § 267.90 Who must comply with this section?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b), or unless your facility already has a permit that imposes requirements for corrective action under 40 CFR 264.101.

##### § 267.91–267.100 [Reserved]

##### § 267.101 What must I do to address corrective action for solid waste management units?

(a) You must institute corrective action as necessary to protect human

health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) The Regional Administrator will specify corrective action in the supplemental portion of your standardized permit in accordance with this section and 40 CFR part 264, subpart S. The Regional Administrator will include in the supplemental portion of your standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

(c) You must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless you demonstrate to the satisfaction of the Regional Administrator that, despite your best efforts, you were unable to obtain the necessary permission to undertake such actions. You are not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. You must provide assurances of financial responsibility for such corrective action.

(d) You do not have to comply with this section if you are the owner or operator of a remediation waste site unless your site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

#### Subpart G—Closure

##### § 267.110 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

##### § 267.111 What general standards must I meet when I stop operating the unit?

You must close the storage and treatment units in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Meets the closure requirements of this subpart and the requirements of §§ 267.176, 267.201, and 267.1108. If you determine that, when applicable, the closure requirements of § 267.201(tanks) or § 267.1108 (containment buildings) cannot be met, then you must close the unit in accordance with the requirements that apply to landfills (§ 264.310). In addition, for the purposes of post-closure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and you must apply for a post-closure care permit in accordance with 40 CFR part 270.

##### § 267.112 What procedures must I follow?

(a) To close a facility, you must follow your approved closure plan, and follow notification requirements.

(1) Your closure plan must be submitted at the time you submitted your Notice of Intent to operate under a standardized permit. Final issuance of the standardized permit constitutes approval of the closure plan, and the plan becomes a condition of the RCRA standardized permit.

(2) The Director's approval of the plan must ensure that the approved plan is consistent with §§ 267.111 through 267.115, 267.176, 267.201, and 267.1108.

(b) Satisfy the requirements for content of closure plan. The closure plan must identify steps necessary to perform partial and/or final closure of the facility. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility subject to this subpart will be closed following § 267.111.

(2) A description of how final closure of the facility will be conducted in accordance with § 267.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility.

(3) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods you will use during partial and/or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable.

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure.

These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(5) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.

(6) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.

(7) For facilities that use trust funds to establish financial assurance under § 267.143 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(c) You may submit a written notification to the Director for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in 40 CFR 124.211.

(1) Events leading to a change in the closure plan, and therefore requiring a modification, may include:

(i) A change in the operating plan or facility design;

(ii) A change in the expected year of closure, if applicable; or

(iii) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

(2) The written notification or request must include a copy of the amended closure plan for review or approval by the Director. The Director will approve, disapprove, or modify this amended plan in accordance with the procedures in 40 CFR 124.211 and 270.320.

(d) Notification before final closure.

(1) You must notify the Director in writing at least 45 days before the date that you expect to begin final closure of a treatment or storage tank, container storage area, or containment building.

(2) The date when you "expect to begin closure" must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

(3) If your facility's permit is terminated, or if you are otherwise ordered, by judicial decree or final order under section 3008 of RCRA, to cease receiving hazardous wastes or to close,

then the requirements of this paragraph (d) do not apply. However, you must close the facility following the deadlines established in § 267.115.

#### § 267.113 Will the public have the opportunity to comment on the plan?

(a) The Director will provide you and the public, when the draft standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by 40 CFR 124.208. The Director will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan, and the permit.

(b) The Director will give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

#### § 267.114 [Reserved]

#### § 267.115 After I stop operating, how long until I must close?

(a) Within 90 days after the final volume of hazardous waste is sent to a unit, you must treat or remove from the unit all hazardous wastes following the approved closure plan.

(b) You must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Director may approve an extension of 180 days to the closure period if you comply with all applicable requirements for requesting a modification to the permit and demonstrate that:

(1) The final closure activities will take longer than 180 days to complete due to circumstances beyond your control, excluding ground water contamination; and

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

(3) The demonstration must be made at least 30 days prior to the expiration of the initial 180-day period.

(c) Nothing in this section precludes you from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

#### § 267.116 What must I do with contaminated equipment, structure, and soils?

You must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and must handle that waste following all applicable requirements of 40 CFR part 262.

#### § 267.117 How do I certify closure?

Within 60 days of the completion of final closure of each unit under a part 270 subpart J standardized permit, you must submit to the Director, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and an independent registered professional engineer must sign the certification. You must furnish documentation supporting the independent registered professional engineer's certification to the Director upon request until he releases you from the financial assurance requirements for closure under § 267.143(i).

### Subpart H—Financial Requirements

#### § 267.140 Who must comply with this subpart, and briefly, what do they have to do?

(a) The regulations in this subpart apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in § 267.1(b), or § 267.140(d) below.

(b) The owner or operator must:

(1) Prepare a closure cost estimate as required in § 267.142;

(2) Demonstrate financial assurance for closure as required in § 267.143; and

(3) Demonstrate financial assurance for liability as required in § 267.147.

(c) The owner or operator must notify the Regional Administrator if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code (See also § 267.148).

(d) States and the Federal government are exempt from the requirements of this subpart.

#### § 267.141 Definitions of terms as used in this subpart.

(a) *Closure plan* means the plan for closure prepared in accordance with the requirements of § 267.112.

(b) *Current closure cost estimate* means the most recent of the estimates prepared in accordance with § 267.142 (a), (b), and (c).

(c) [Reserved]

(d) *Parent corporation* means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) [Reserved]

(f) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

*Assets* means all existing and all probable future economic benefits obtained or controlled by a particular entity.

*Current plugging and abandonment cost estimate* means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this chapter.

*Independently audited* refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

*Liabilities* means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

*Tangible net worth* means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements, the terms *bodily injury and property damage* shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

*Accidental occurrence* means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

*Legal defense costs* means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

*Sudden accidental occurrence* means an occurrence which is not continuous or repeated in nature.

(h) *Substantial business relationship* means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

#### § 267.142 Cost estimate for closure.

(a) The owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 267.111 through 267.115 and applicable closure requirements in §§ 267.176, 267.201, 267.1108.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see § 267.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 267.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 267.143. For owners and operators using the financial test or

corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 267.143(f)(2)(iii). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 267.142(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with paragraphs (a) and (c) of this section and, when this estimate has been adjusted in accordance with paragraph (b) of this section, the latest adjusted closure cost estimate.

#### § 267.143 Financial assurance for closure.

The owner or operator must establish financial assurance for closure of each storage or treatment unit that he owns or operates. In establishing financial assurance for closure, the owner or operator must choose from the financial assurance mechanisms in paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section. The owner or operator can also use a combination of mechanisms for a single facility if they meet the requirement in paragraph (h) of this section, or may use a single mechanism for multiple facilities as in paragraph (i) of this section. The Regional Administrator will release the owner or operator from the requirements of this section after the owner or operator meets the criteria under paragraph (j) of this section.

(a) *Closure Trust Fund.* Owners and operators can use the "closure trust fund," that is specified in 40 CFR 264.143(a)(1) and (2), and 264.143(a)(6)-(11). For purposes of this paragraph, the following provisions also apply:

(1) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period."

(2) For a new facility, the first payment into the closure trust fund must be made before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the Regional Administrator before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (h) of this section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is

$$\text{Next Payment} = \frac{\text{Current Closure Estimate} - \text{Current Value of the Trust Fund}}{\text{Divided by Years Remaining in the Pay-In Period.}}$$

(3) The owner or operator of a facility existing on the effective date of this paragraph can establish a trust fund to meet this paragraph's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(2) or (a)(3) of this section.

(5) The owner or operator must submit a trust agreement with the wording specified in 40 CFR 264.151(a)(1).

(b) *Surety Bond Guaranteeing Payment into a Closure Trust Fund.*

Owners and operators can use the "surety bond guaranteeing payment into a closure trust fund," as specified in 40 CFR 264.143(b), including the use of the surety bond instrument specified at 40 CFR 264.151(b), and the standby trust specified at 40 CFR 264.143(b)(3).

(c) *Surety Bond Guaranteeing Performance of Closure.* Owners and operators can use the "surety bond guaranteeing performance of closure," as specified in 40 CFR 264.143(c), the submission and use of the surety bond instrument specified at 40 CFR 264.151(c), and the standby trust specified at 40 CFR 264.143(c)(3).

(d) *Closure Letter of Credit.* Owners and operators can use the "closure letter of credit" specified in 40 CFR 264.143(d), the submission and use of the irrevocable letter of credit instrument specified in 40 CFR 264.151(d), and the standby trust specified in 40 CFR 264.143(d)(3).

(e) *Closure Insurance.* Owners and operators can use "closure insurance," as specified in 40 CFR 264.143(e), utilizing the certificate of insurance for closure specified at 40 CFR 264.151(e).

(f) *Corporate financial test.* An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified in this paragraph:

(1) *Financial component.*

(i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section), including guarantees, covered by a financial test plus \$10 million, except as provided in paragraph (f)(1)(ii)(B) of this section.

(B) \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Regional Administrator.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in paragraph (f)(2)(i)(A)(1) of this section.

(2) *Recordkeeping and reporting requirements.*

(i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that:

(1) Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which EPA directly operates and obligations where EPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to:

(i) Liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR 264.101, 264.142, 264.144, 264.147, 265.142, 265.144, and 265.147;

(ii) Cost estimates required for municipal solid waste management facilities under 40 CFR 258.71, 258.72, and 258.73;

(iii) Current plugging cost estimates required for UIC facilities under 40 CFR 144.62;

(iv) Cost estimates required for petroleum underground storage tank facilities under 40 CFR 280.93;

(v) Cost estimates required for PCB storage facilities under 40 CFR 761.65;

(vi) Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act; and

(vii) Any other environmental obligations that are assured through a financial test.

(2) Provides evidence demonstrating that the firm meets the conditions of either paragraph (f)(1)(i)(A) or (f)(1)(i)(B) or (f)(1)(i)(C) of this section and paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next

sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i)(B) or (f)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (f)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an

additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) of this section or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

*(g) Corporate Guarantee.*

(1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent

corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (f) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording in 40 CFR 264.151(h). The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) For a new facility, the guarantee must be effective and the guarantor must submit the items in paragraph (g)(1) of this section and the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before the owner or operator places waste in the facility.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform closure (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Regional Administrator, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Regional Administrator. If the owner or operator fails to provide alternate financial assurance and obtain the

written approval of such alternative assurance from the Regional Administrator within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Regional Administrator within 120 days of the cancellation notice.

(4) If a corporate guarantor no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Regional Administrator for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Regional Administrator for approval.

(5) The guarantor is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with paragraph (j) of this section.

(h) *Use of Multiple Financial Mechanisms.* An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), (f), and (g) respectively of this section, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for closure of the facility.

(i) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a financial mechanism for multiple facilities, as specified in § 264.143(h) of this chapter.

(j) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving

certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

#### § 267.144–267.146 [Reserved]

#### § 267.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a)(1) through (a)(7) of this section:

(1) *Trust fund for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in 40 CFR 264.147(j).

(2) *Surety bond for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in 40 CFR 264.147(i).

(3) *Letter of credit for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in 40 CFR 264.147(h).

(4) *Insurance for liability coverage.* An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in 40 CFR 264.147(a)(1).

(5) *Financial test for liability coverage.* An owner or operator may meet the requirements of this section by

passing a financial test as specified in paragraph (f) of this section.

(6) *Guarantee for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in paragraph (g) of this section.

(7) *Combination of mechanisms.* An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 40 CFR 264.147(a)(6).

(8) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(7) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(7) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(7) of this section.

(b)–(d) [Reserved]

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

(f) *Financial test for Liability Coverage.* An owner or operator that satisfies the requirements of this paragraph (f) may demonstrate financial assurance for liability up to the amount specified in this paragraph (f):

(1) *Financial component.*

(i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10 million.

(ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

(iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under § 267.143(f), through a financial test must meet the requirements of § 267.143(f).

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of paragraphs (f)(1)(i) and (f)(1)(ii) of this section. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit under § 267, the letter should use the wording in § 267.151(b). If the firm is providing only liability coverage through a financial test for facilities regulated under § 267 and also § 264 or § 265, it should use the letter in § 264.151(g). If the firm is providing liability coverage through a financial test for a facility or facilities with a permit under § 267, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in § 267.151(a) for the facilities issued a permit under § 267.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section (§ 267.147) within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data

showing that the owner or operator satisfies paragraphs (f)(1)(i) and (ii) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as

specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) *Guarantee for liability coverage.* (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(3) of this section. The wording of the guarantee must be identical to the wording specified in 40 CFR 264.151(h)(2). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(2) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation

of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the State in which the guarantor is incorporated, and each State in which a facility covered by the guarantee is located, have submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) The non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and

(B) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

**§ 267.148 Incapacity of owners or operators, guarantors, or financial institutions.**

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in §§ 267.143(g) and 267.147 (g) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

(b) An owner or operator who fulfills the requirements of § 267.143 or § 267.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee

institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

**§ 267.149 [Reserved]**

**§ 267.150 State assumption of responsibility.**

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of § 267.143 or § 267.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of: Certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification Number, name, and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of § 267.143 or § 267.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart

by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

**§ 267.151 Wording of the instruments.**

(a) The chief financial officer of an owner or operator of a facility with a standardized permit who uses a financial test to demonstrate financial assurance for that facility must complete a letter as specified in § 267.143(f) of this chapter. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure costs, as specified in [insert "subpart H of 40 CFR part 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having [insert "a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's" or "a ratio of less than 1.50 comparing total liabilities to net worth" or "a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities."]

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[If this firm qualifies on the basis of its bond rating fill in the requested information: "This firm has a rating of its senior unsecured debt of" [insert the bond rating] "from" [insert "Standard and Poor's" or "Moody's"].

Complete Line 1. Total Liabilities below and then skip the remaining questions in the next section and resume completing the form at the section entitled *Obligations Covered by a Financial Test or Corporate Guarantee.*

[If this firm qualifies for the financial test on the basis of its ratio of liabilities to net worth, or sum of income, depreciation, depletion, and amortization to net worth, please complete the following section.]

*1. Total Liabilities .....	\$ _____
*2. Net Worth .....	\$ _____
*3. Net Income .....	\$ _____
*4. Depreciation .....	\$ _____
*5. Depletion (if applicable) .....	\$ _____
*6. Amortization .....	\$ _____
*7. Sum of Lines 3., 4., 5. & 6 .....	\$ _____

[If the above figures are taken directly from the most recent audited financial statements for this firm insert "The above figures are taken directly from the most recent audited financial statements for this firm." If they are not, insert "The following items are not taken directly from the firms most recent audited financial statements" [insert the numbers of the items and attach an explanation of how they were derived.]  
 [Complete the following calculations]

8. Line 1. + Line 2. = ..... \_\_\_\_\_  
 9. Line 7. + Line 1. = ..... \_\_\_\_\_

Is Line 8. less than 1.5? \_\_\_ Yes \_\_\_ No  
 Is Line 9 greater than 0.10? ..... \_\_\_ Yes \_\_\_ No  
 [If you did not answer Yes to either of these two questions, you cannot use the financial test and need not complete this letter. Instead, you must notify the permitting authority for the facility that you intend to establish alternate financial assurance as specified in 40 CFR 267.143. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the

owner or operator no longer meets the requirements of this section. The owner or operator must also provide alternative financial assurance within 120 days after the end of such fiscal year.]

*Obligations Covered by a Financial Test or Corporate Guarantee*

[On the following lines list all obligations that are covered by a financial test or a corporate guarantee extended by your firm. You may add additional lines and leave blank entries that do not apply to your situation.]

Hazardous Waste Facility Name and ID	State	Closure	Post-Closure	Corrective Action
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
Hazardous Waste Third Party Liability				\$ _____
Municipal Waste Facilities	State	Closure	Post-Closure	Corrective Action
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
Underground Injection Control	State			Plugging action
_____	_____			\$ _____
Petroleum Underground Storage Tanks				_____
PCB Storage Facility Name and ID	State			Closure
_____	_____			\$ _____
Any financial assurance required under, or as part of an action undertaken under, the	Comprehensive Environmental Response, Compensation, and Liability Act.			
	Site name		State	Amount
_____	_____		_____	\$ _____

Any other environmental obligations that are assured through a financial test.

Name	Amount
_____	\$ _____
*10. Total of all amounts	\$ _____
*11. Line 10 + \$10,000,000 =	\$ _____
*12. Total Assets	\$ _____
*13. Intangible Assets	\$ _____
*14. Tangible Assets (Line 12. - Line 13)	\$ _____
*15. Tangible Net Worth (Line 14. - Line 1.)	\$ _____
*16. Assets in the United States	\$ _____
Is Line 15 greater than Line 11?	___ Yes ___ No

Is Line 16 no less than Line 10? \_\_\_ Yes \_\_\_ No  
 [You must be able to answer Yes to both these questions to use the financial test for this facility.]  
 I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.  
 [Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Date] \_\_\_\_\_  
 [After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility is located. In addition, a signed copy must be sent to every authority who (1) requires a

demonstration through a financial test for each of the other obligations in the letter that are assured through a financial test, or (2) accepts a guarantee for an obligation listed in this letter.]

(b)The chief financial officer of an owner or operator of a facility with a standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other standardized permit) facility(ies) must complete a letter as specified in Section 267.147(f) of this chapter. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for third party liability, as specified in [insert "subpart

H of 40 CFR part 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having tangible net worth of at least \$10 million more than the amount of liability coverage and assets in the United States of at least the amount of liability coverage.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Please complete the following section.]

*1. Total Assets .....	\$ _____
*2. Intangible Assets .....	\$ _____
*3. Tangible Assets (Line 1 - Line 2) .....	\$ _____
*4. Total Liabilities .....	\$ _____
5. Tangible Net Worth (Line 3 - Line 4) .....	\$ _____
*6. Assets in the United States .....	\$ _____
7. Amount of liability coverage .....	\$ _____

Is Line 5 At least \$10 million greater than Line 7? .....  Yes  No  
 Is Line 6 at least equal to Line 7? .....  Yes  No

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Date] \_\_\_\_\_

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility(ies) is(are) located.]

**Subpart I—Use and Management of Containers**

**§ 267.170 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in containers under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b).

**§ 267.171 What standards apply to the containers?**

Standards apply to the condition of the containers, to the compatibility of

waste with the containers, and to the management of the containers.

(a) Condition of containers. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, you must either:

- (1) Transfer the hazardous waste from this container to a container that is in good condition; or
- (2) Manage the waste in some other way that complies with the requirements of this part.

(b) Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, you must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

(c) Management of containers. (1) You must always keep a container holding hazardous waste closed during storage, except when you add or remove waste.

(2) You must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

**§ 267.172 What are the inspection requirements?**

At least weekly, you must inspect areas where you store containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

**§ 267.173 What standards apply to the container storage areas?**

(a) You must design and operate a containment system for your container storage areas according to the requirements in paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.

(b) The design and operating requirements for a containment system are:

(1) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

(2) The base must be sloped or the containment system, must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container, whichever is greater. This requirement

does not apply to containers that do not contain free liquids.

(4) You must prevent run-on into the containment system unless the collection system has sufficient excess capacity, in addition to that required in paragraph (b)(3) of this section, to contain the liquid.

(5) You must remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

(c) Except as provided in paragraph (d) of this section, you do not need a containment system as defined in paragraph (b) of this section for storage areas that store containers holding only wastes with no free liquids, if:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) You must have a containment system defined by paragraph (b) of this section for storage areas that store containers holding FO20, FO21, FO22, FO23, FO26, and FO27 wastes, even if the wastes do not contain free liquids.

**§ 267.174 What special requirements must I meet for ignitable or reactive waste?**

You must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from your facility property line. You must also follow the general requirements for ignitable or reactive wastes that are specified in § 267.17(a).

**§ 267.175 What special requirements must I meet for incompatible wastes?**

(a) You must not place incompatible wastes, or incompatible wastes and materials (see appendix V to 40 CFR part 264 for examples), in the same container, unless you comply with § 267.17(b).

(b) You must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

(c) You must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

**§ 267.176 What must I do when I want to stop using the containers?**

You must remove all hazardous waste and hazardous waste residues from the

containment system. You must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

**§ 267.177 What air emission standards apply?**

You must manage all hazardous waste placed in a container according to the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

**Subpart J—Tank Systems**

**§ 267.190 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b).

(a) You do not have to meet the secondary containment requirements in § 267.195 if your tank systems do not contain free liquids and are situated inside a building with an impermeable floor. You must demonstrate the absence or presence of free liquids in the stored/treated waste, using Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11.

(b) You do not have to meet the secondary containment requirements of § 267.195(a) if your tank system, including sumps, as defined in 40 CFR 260.10, is part of a secondary containment system to collect or contain releases of hazardous wastes.

**§ 267.191 What are the required design and construction standards for new tank systems or components?**

You must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. You must obtain a written assessment, reviewed and certified by an independent, qualified registered professional engineer, following 40 CFR 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of

hazardous waste. This assessment must include, at a minimum, the following information:

- (a) Design standard(s) for the construction of tank(s) and/or the ancillary equipment.
- (b) Hazardous characteristics of the waste(s) to be handled.
- (c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:
  - (1) Factors affecting the potential for corrosion, such as:
    - (i) Soil moisture content.
    - (ii) Soil pH.
    - (iii) Soil sulfides level.
    - (iv) Soil resistivity.
    - (v) Structure to soil potential.
    - (vi) Existence of stray electric current.
    - (vii) Existing corrosion-protection measures (for example, coating, cathodic protection).
  - (2) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:
    - (i) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.
    - (ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes) and
    - (iii) Electrical isolation devices such as insulating joints, flanges, etc.
  - (d) Design considerations to ensure that:
    - (1) Tank foundations will maintain the load of a full tank.
    - (2) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of § 267.18(a).
    - (3) Tank systems will withstand the effects of frost heave.

(1) Weld breaks.

(2) Punctures.

(3) Scrapes of protective coatings.

(4) Cracks.

(5) Corrosion.

(6) Other structural damage or inadequate construction/installation.

(b) You must remedy all discrepancies before the tank system is placed in use.

**§ 267.192 What handling and inspection procedures must I follow during installation of new tank systems?**

- (a) You must ensure that you follow proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

- (1) Weld breaks.
  - (2) Punctures.
  - (3) Scrapes of protective coatings.
  - (4) Cracks.
  - (5) Corrosion.
  - (6) Other structural damage or inadequate construction/installation.
- (b) You must remedy all discrepancies before the tank system is placed in use.

**§ 267.193 What testing must I do?**

You must test all new tanks and ancillary equipment for tightness before you place them in use. If you find a tank system that is not tight, you must perform all repairs necessary to remedy the leak(s) in the system before you cover, enclose, or place the tank system into use.

**§ 267.194 What installation requirements must I follow?**

(a) You must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(b) You must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under § 267.191(c), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

(c) You must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in §§ 267.192, 267.193, and paragraphs (a) and (b) of this section. The written statement must attest that the tank system was properly designed and installed and that you made repairs under §§ 267.192 and 267.193. These written statements must also include the certification statement as required in 40 CFR 270.11(d).

**§ 267.195 What are the secondary containment requirements?**

To prevent the release of hazardous waste or hazardous constituents to the environment, you must provide secondary containment that meets the requirements of this section for all new and existing tank systems.

(a) Secondary containment systems must be:

- (1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be, at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours.

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. You must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

**§ 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?**

(a) Secondary containment for tanks must include one or more of the following:

(1) A liner (external to the tank).

(2) A double-walled tank.

(3) An equivalent device; you must maintain documentation of equivalency at the facility.

(b) External liner systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Free of cracks or gaps.

(4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (that is, capable of preventing lateral as well as vertical migration of the waste).

(c) Double-walled tanks must be:

(1) Designed as an integral structure (that is, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

(3) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours.

**§ 267.197 What are the requirements for ancillary equipment?**

You must provide ancillary equipment with secondary containment (for example, trench, jacketing, double-walled piping) that meets the requirements of § 267.195 (a) and (b), except for:

(a) Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized above ground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

**§ 267.198 What are the general operating requirements for my tank systems?**

(a) You must not place hazardous wastes or treatment reagents in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) You must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include, at a minimum:

(1) Spill prevention controls (for example, check valves, dry disconnect couplings).

(2) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank).

(3) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) You must comply with the requirements of § 267.200 if a leak or spill occurs in the tank system.

**§ 267.199 What inspection requirements must I meet?**

You must comply with the following requirements for scheduling, conducting, and documenting inspections.

(a) Develop and follow a schedule and procedure for inspecting overflow controls.

(b) Inspect at least once each operating day:

(1) Aboveground portions of the tank system to detect corrosion or releases of waste.

(2) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

(c) Inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.

(2) Inspect and/or test all sources of impressed current, as appropriate, at least every other month.

(d) Document, in the operating record of the facility, an inspection of those items in paragraphs (a) through (c) of this section.

**§ 267.200 What must I do in case of a leak or a spill?**

If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, you must remove the system from service immediately, and you must satisfy the following requirements:

(a) Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Remove the waste from the tank system or secondary containment system.

(1) If the release was from the tank system, you must, within 24 hours after

detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, you must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment.

(c) Immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water.

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Report any release to the environment, except as provided in paragraph (d)(1) of this section, to the Regional Administrator within 24 hours of its detection. If you have reported the release pursuant to 40 CFR part 302, that report will satisfy this requirement.

(1) You need not report on a leak or spill of hazardous waste if it is:

(i) Less than or equal to a quantity of one (1) pound; and

(ii) Immediately contained and cleaned up.

(2) Within 30 days of detection of a release to the environment, you must submit a report to the Regional Administrator containing the following information:

(i) The likely route of migration of the release.

(ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate).

(iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, you must submit these data to the Regional Administrator as soon as they become available.

(iv) The proximity to downgradient drinking water, surface water, and populated areas.

(v) A description of response actions taken or planned.

(e) Either close the system or make necessary repairs.

(1) Unless you satisfy the requirements of paragraphs (e)(2) and (3) of this section, you must close the tank system according to § 267.201.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, you may return the system to service as soon as you remove the released waste and make any necessary repairs.

(3) If the cause of the release was a leak from the primary tank system into

the secondary containment system, you must repair the system before returning the tank system to service.

(f) If you have made extensive repairs to a tank system in accordance with paragraph (e) of this section (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 40 CFR 270.11(d).

(1) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

(2) You must submit this certification to the Regional Administrator within seven days after returning the tank system to use.

#### § 267.201 What must I do when I stop operating the tank system?

When you close a tank system, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in subparts G and H of this part.

#### § 267.202 What special requirements must I meet for ignitable or reactive wastes?

(a) You may not place ignitable or reactive waste in tank systems, unless:

(1) You treat, render, or mix the waste before or immediately after placement in the tank system so that:

(i) You comply with § 267.17(b); and

(ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this chapter; or

(2) You store or treat the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) You use the tank system solely for emergencies.

(b) If you store or treat ignitable or reactive waste in a tank, you must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977

or 1981), (incorporated by reference, see 40 CFR 260.11).

#### § 267.203 What special requirements must I meet for incompatible wastes?

(a) You may not place incompatible wastes, or incompatible wastes and materials, in the same tank system, unless you comply with § 267.17(b).

(b) You may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless you comply with § 267.17(b).

#### § 267.204 What air emission standards apply?

You must manage all hazardous waste placed in a tank following the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

#### Subparts K through CC [Reserved]

#### Subpart DD—Containment buildings

##### § 267.1100 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in containment buildings under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b). Storage and/or treatment in your containment building is not land disposal as defined in 40 CFR 268.2 if your unit meets the requirements of §§ 267.1101, 267.1102, and 267.1103.

##### § 267.1101 What design and operating standards must my containment building meet?

Your containment building must comply with the design and operating standards in this section. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this section.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, runoff), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system, if required under § 267.1103, must be designed and

constructed of manmade materials of sufficient strength and thickness to:

(1) Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit.

(2) Prevent failure due to:

(i) Pressure gradients, settlement, compression, or uplift.

(ii) Physical contact with the hazardous wastes to which they are exposed.

(iii) Climatic conditions.

(iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

(v) Collapse or other failure.

(c) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

(d) You must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(e) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(f) If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(1) They provide an effective barrier against fugitive dust emissions under § 267.1102(d).

(2) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(g) You must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(h) You must obtain certification by a qualified registered professional building design meets the requirements of §§ 267.1102, 267.1103, and paragraphs (a) through (f) of this section.

**§ 267.1102 What other requirements must I meet to prevent releases?**

You must use controls and practices to ensure containment of the hazardous waste within the unit, and must, at a minimum:

(a) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.

(b) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.

(c) Take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. You must designate an area to decontaminate equipment, and you must collect and properly manage any rinsate.

(d) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, you must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) with sound air pollution control practices. You must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

**§ 267.1103 What additional design and operating standards apply if liquids will be in my containment building?**

If your containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, you must include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.

(1) The primary barrier must be sloped to drain liquids to the associated collection system; and

(2) You must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time.

(c) A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous

wastes and liquids at the earliest practical time.

(1) You may meet the requirements of the leak detection component of the secondary containment system by installing a system that is, at a minimum:

(i) Constructed with a bottom slope of 1 percent or more; and

(ii) Constructed of a granular drainage material with a hydraulic conductivity of  $1 \times 10^{-2}$  cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  m<sup>2</sup>/sec or more.

(2) If you will be conducting treatment in the building, you must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(3) You must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

**§ 267.1104 How may I obtain a waiver from secondary containment requirements?**

Notwithstanding any other provision of this subpart, the Regional Administrator may waive requirements for secondary containment for a permitted containment building where:

(a) You demonstrate that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements; and

(b) Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

**§ 267.1105 What do I do if my containment building contains areas both with and without secondary containment?**

For these containment buildings, you must:

(a) Design and operate each area in accordance with the requirements enumerated in §§ 267.1101 through 267.1103.

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment.

(c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

**§ 267.1106 What do I do if I detect a release?**

Throughout the active life of the containment building, if you detect a condition that could lead to or has caused a release of hazardous waste, you must repair the condition promptly, in accordance with the following procedures.

(a) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), you must:

- (1) Enter a record of the discovery in the facility operating record;
- (2) Immediately remove the portion of the containment building affected by the condition from service;

(3) Determine what steps you must take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

(4) Within 7 days after the discovery of the condition, notify the Regional Administrator of the condition, and within 14 working days, provide a written notice to the Regional Administrator with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(b) The Regional Administrator will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify you of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and cleanup, you must notify the Regional Administrator in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)(4) of this section.

**§ 267.1107 Can a containment building itself be considered secondary containment?**

Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions.

(a) A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 267.196(a).

(b) The containment building must also meet the requirements of § 267.195(a), (b)(1) and (2) to be considered an acceptable secondary containment system for a tank.

**§ 267.1108 What must I do when I stop operating the containment building?**

When you close a containment building, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subparts G and H of this part.

**PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

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

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

**Subpart A—General Information**

■ 14. Section 270.1 is amended by adding sentences after the second sentence of paragraph (b) introductory text, and by adding paragraphs (b)(1) and (2) to read as follows:

**§ 270.1 Purpose and scope of these regulations.**

(b) \* \* \* Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part. \* \* \*

(1) The facility generates hazardous waste and then non-thermally treats or stores hazardous waste on-site in tanks, containers, or containment buildings; or

(2) The facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings.

■ 15. Section 270.2 is amended by revising the definition for "Permit" and adding a definition for "Standardized permit" in alphabetical order to read as follows:

**§ 270.2 Definitions.**

*Permit* means an authorization, license, or equivalent control document issued by EPA or an approved State to

implement the requirements of this part and parts 271 and 124 of this chapter. Permit includes permit by rule (§ 270.60), emergency permit (§ 270.61) and standardized permit (subpart J of this part). Permit does not include RCRA interim status (subpart G of this part), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.

\* \* \* \* \*  
*Standardized* permit means a RCRA permit issued under part 124, subpart G of this chapter and subpart J of this part authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.  
 \* \* \* \* \*

**Subpart B—Permit Application**

■ 16. Section 270.10 is amended by revising paragraphs (a) and (h) to read as follows:

**§ 270.10 General application requirements.**

(a) Applying for a permit. Below is information on how to obtain a permit and where to find requirements for specific permits:

(1) If you are covered by RCRA permits by rule (§ 270.60), you need not apply.

(2) If you currently have interim status, you must apply for permits when required by the Director.

(3) If you are required to have a permit (including new applicants and permittees with expiring permits), you must complete, sign, and submit an application to the Director, as described in this section and §§ 270.70 through 270.73.

(4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in § 270.61.

(5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and administration are found exclusively in § 270.65.

(6) If you are seeking a standardized permit, the procedures for application and issuance are found in part 124, subpart G of this chapter and subpart J of this part.

(h) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you have two options:

(1) You may submit a new application at least 180 days before the expiration date of the effective permit, unless the Director allows a later date; or

(2) If you intend to be covered by a standardized permit, you may submit a Notice of Intent as described in § 270.51(e)(1) at least 180 days before the expiration date of the effective permit, unless the Director allows a later date. The Director may not allow you to submit applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by § 270.51(e)(2).

**Subpart D—Changes to Permits**

■ 17. Section 270.40 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 270.40 Transfer of permits.**

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 270.42 or as a routine change with prior approval under 40 CFR 124.213.

■ 18. Section 270.41 is amended by revising the next to last sentence of the introductory paragraph and adding paragraph (b)(3) to read as follows:

**§ 270.41 Modification or revocation and reissuance of permits.**

\* \* \* If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of § 270.42, or § 270.320 and 40 CFR part 124, subpart G.

(3) The Director has received notification under 40 CFR 124.202(b) of a facility owner or operator's intent to be covered by a standardized permit.

**Subpart E—Expiration and Continuation of Permits**

■ 19. Section 270.51 is amended by adding paragraph (e) to read as follows:

**§ 270.51 Continuation of expiring permits.**

(e) Standardized permits.  
(1) The conditions of your expired standardized permit continue until the effective date of your new permit (see 40 CFR 124.15) if all of the following are true:

- (i) If EPA is the permit-issuing authority.
- (ii) If you submit a timely and complete Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit; and

(iii) If the Director, through no fault on your part, does not issue your permit before your previous permit expires (for example, where it is impractical to make the permit effective by that date because of time or resource constraints).

(2) In some cases, the Director may notify you that you are not eligible for a standardized permit (see 40 CFR 124.206). In those cases, the conditions of your expired permit will continue if you submit the information specified in paragraph (a)(1) of this section (that is, a complete application for a new permit) within 60 days after you receive our notification that you are not eligible for a standardized permit.

**Subpart F—Special Forms of Permits**

■ 20. Add § 270.67 to subpart F to read as follows:

**§ 270.67 RCRA standardized permits for storage and treatment units.**

RCRA standardized permits are special forms of permits for TSD owners or operators that:

- (a) Generate hazardous waste and then non-thermally treat or store the hazardous waste on-site in tanks, containers, or containment buildings; or
- (b) Receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. Standardized permit facility owners or operators are regulated under subpart J of this part, part 124 subpart G of this chapter, and part 267 of this chapter.

■ 21. Subpart J is added to part 270 to read as follows:

**Subpart J—RCRA Standardized Permits for Storage and Treatment Units**

**General Information About Standardized Permits**

- Sec. 270.250 What is a RCRA standardized permit?
- 270.255 Who is eligible for a standardized permit?
- 270.260 What requirements of Part 270 apply to a standardized permit?

**Applying for a Standardized Permit**

- 270.270 How do I apply for a standardized permit?
- 270.275 What information must I submit to the permitting agency to support my standardized permit application?
- 270.280 What are the certification requirements?

**Information That Must Be Kept at Your Facility**

- 270.290 What general types of information must I keep at my facility?

- 270.300 What container information must I keep at my facility?
- 270.305 What tank information must I keep at my facility?
- 270.310 What equipment information must I keep at my facility?
- 270.315 What air emissions control information must I keep at my facility?

**Modifying a Standardized Permit**

- 270.320 How do I modify my RCRA standardized permit?

**Subpart J—RCRA Standardized Permits for Storage and Treatment Units**

**General Information About Standardized Permits**

**§ 270.250 What is a RCRA standardized permit?**

A RCRA standardized permit (RCRA) is a special type of permit that authorizes you to manage hazardous waste. It is issued under 40 CFR part 124, subpart G and subpart J of this part.

**§ 270.255 Who is eligible for a standardized permit?**

- (a) You may be eligible for a standardized permit if:
  - (1) You generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings; or
  - (2) You receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.
  - (3) We will inform you of your eligibility when we make a decision on your permit application.
- (b) [Reserved]

**§ 270.260 What requirements of part 270 apply to a standardized permit?**

The following subparts and sections of this part 270 apply to a standardized permit:

- (a) Subpart A—General Information: All sections.
- (b) Subpart B—Permit Application: §§ 270.10, 270.11, 270.12, 270.13 and 270.29.
- (c) Subpart C—Permit Conditions: All sections.
- (d) Subpart D—Changes to Permit: §§ 270.40, 270.41, and 270.43.
- (e) Subpart E—Expiration and Continuation of Permits: All sections.
- (f) Subpart F—Special Forms of Permits: § 270.67.
- (g) Subpart G—Interim Status: All sections.
- (h) Subpart H—Remedial Action Plans: Does not apply.
- (i) Subpart J—Standardized Permits: All sections.

**Applying for a Standardized Permit****§ 270.270 How do I apply for a standardized permit?**

You apply for a standardized permit by following the procedures in 40 CFR part 124, subpart G and this subpart.

**§ 270.275 What information must I submit to the permitting agency to support my standardized permit application?**

The information in paragraphs (a) through (j) of this section will be the basis of your standardized permit application. You must submit it to the Director when you submit your Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit:

(a) The Part A information described in § 270.13.

(b) A meeting summary and other materials required by 40 CFR 124.31.

(c) Documentation of compliance with the location standards of 40 CFR 267.18 and § 270.14(b)(11).

(d) Information that allows the Director to carry out our obligations under other Federal laws required in § 270.3.

(e) Solid waste management unit information required by § 270.14(d).

(f) A certification meeting the requirements of § 270.280, and an audit of the facility's compliance status with 40 CFR part 267 as required by § 270.280.

(g) A closure plan prepared in accordance with part 267, subpart G.

(h) The most recent closure cost estimate for your facility prepared under § 267.142 and a copy of the documentation required to demonstrate financial assurance under § 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(i) If you manage wastes generated off-site, the waste analysis plan.

(j) If you manage waste generated from off-site, documentation showing that the waste generator and the off-site facility are under the same ownership.

**§ 270.280 What are the certification requirements?**

You must submit a signed certification based on your audit of your facility's compliance with 40 CFR part 267.

(a) Your certification must read: I certify under penalty of law that:

(1) I have personally examined and am familiar with the report containing the results of an audit conducted of my facility's compliance status with 40 CFR part 267, which supports this certification. Based on my inquiry of those individuals immediately responsible for conducting the audit and

preparing the report, I believe that my (include paragraph (a)(1)(i) and (ii) this section, whichever applies):

(i) My existing facility complies with all applicable requirements of 40 CFR part 267 and will continue to comply until the expiration of the permit; or

(ii) My facility has been designed, and will be constructed and operated to comply with all applicable requirements of 40 CFR part 267, and will continue to comply until expiration of the permit.

(2) I will make all information that I am required to maintain at my facility by §§ 270.290 through 277.315 readily available for review by the permitting agency and the public; and,

(3) I will continue to make all information required by §§ 270.290 through 277.315 available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

(b) You must sign this certification following the requirements of § 270.11(a)(1) through (3).

(c) This certification must be based upon an audit that you conduct of your facility's compliance status with 40 CFR part 267. A written audit report, signed and certified as accurate by the auditor, must be submitted to the Director with the 40 CFR 124.202(b) Notice of Intent.

**Information That Must Be Kept at Your Facility****§ 270.290 What general types of information must I keep at my facility?**

You must keep the following information at your facility:

(a) A general description of the facility.

(b) Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information you must know to treat or store the wastes properly under the requirements of 40 CFR part 267.

(c) A copy of the waste analysis plan required by 40 CFR 267.13(b).

(d) A description of the security procedures and equipment required by 40 CFR 267.14.

(e) A copy of the general inspection schedule required by 40 CFR 267.15(b). You must include in the inspection schedule applicable requirements of 40 CFR 267.174, 267.193, 267.195, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1088.

(f) A justification of any modification of the preparedness and prevention requirements of 40 CFR part 267, subpart C (§§ 267.30 to 267.35).

(g) A copy of the contingency plan required by 40 CFR part 267, subpart D.

(h) A description of procedures, structures, or equipment used at the facility to:

(1) Prevent hazards in unloading operations (for example, use ramps, special forklifts),

(2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches),

(3) Prevent contamination of water supplies,

(4) Mitigate effects of equipment failure and power outages,

(5) Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing), and

(6) Prevent releases to atmosphere,

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required by 40 CFR 267.17.

(j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

(k) [Reserved]

(l) An outline of both the introductory and continuing training programs you will use to prepare employees to operate or maintain your facility safely as required by 40 CFR 267.16. A brief description of how training will be designed to meet actual job tasks under 40 CFR 267.16(a)(3) requirements.

(m) A copy of the closure plan required by 40 CFR 267.112. Include, where applicable, as part of the plans, specific requirements in 40 CFR 267.176, 267.201, and 267.1108.

(n) [Reserved]

(o) The most recent closure cost estimate for your facility prepared under 40 CFR 267.142 and a copy of the documentation required to demonstrate financial assurance under 40 CFR 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(p) [Reserved]

(q) Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of 40 CFR 267.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR 267.147(a) that you plan to have in effect before initial receipt of hazardous waste for treatment or storage.

(r) Where appropriate, proof of coverage by a State financial mechanism, as required by 40 CFR 267.149 or 267.150.

(s) A topographic map showing a distance of 1,000 feet around your facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). If your facility is in a mountainous area, you should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

- (1) Map scale and date.
- (2) 100-year flood plain area.
- (3) Surface waters including intermittent streams.
- (4) Surrounding land uses (residential, commercial, agricultural, recreational).
- (5) A wind rose (*i.e.*, prevailing wind speed and direction).
- (6) Orientation of the map (north arrow).
- (7) Legal boundaries of your facility site.
- (8) Access control (fences, gates).
- (9) Injection and withdrawal wells both on-site and off-site.
- (10) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.)
- (11) Barriers for drainage or flood control.
- (12) Location of operational units within your facility, where hazardous waste is (or will be) treated or stored. (Include equipment cleanup areas.)

**§ 270.300 What container information must I keep at my facility?**

If you store or treat hazardous waste in containers, you must keep the following information at your facility:

- (a) A description of the containment system to demonstrate compliance with the container storage area provisions of 40 CFR 267.173. This description must show the following:
  - (1) Basic design parameters, dimensions, and materials of construction.
  - (2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.
  - (3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with 40 CFR 267.173(c), including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids.

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with 40 CFR 267.174 (location of buffer zone (15m or 50ft) and containers holding ignitable or reactive wastes) and 40 CFR 267.175(c) (location of incompatible wastes in relation to each other), where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with 40 CFR 267.175(a) and (b), and 267.17(b) and (c).

(e) Information on air emission control equipment as required by § 270.315.

**§ 270.305 What tank information must I keep at my facility?**

If you use tanks to store or treat hazardous waste, you must keep the following information at your facility:

- (a) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under 40 CFR 267.191 and 267.192.
- (b) Dimensions and capacity of each tank.
- (c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (*e.g.*, vents).
- (d) A diagram of piping, instrumentation, and process flow for each tank system.
- (e) A description of materials and equipment used to provide external corrosion protection, as required under 40 CFR 267.191.
- (f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with 40 CFR 267.192 and 267.194.
- (g) Detailed plans and description of how the secondary containment system for each tank system is or will be

designed, constructed, and operated to meet the requirements of 40 CFR 267.195 and 267.196.

(h) [Reserved].

(i) Description of controls and practices to prevent spills and overflows, as required under 40 CFR 267.198.

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of 40 CFR 267.202 and 267.203.

(k) Information on air emission control equipment as required by § 270.315.

**§ 270.310 What equipment information must I keep at my facility?**

If your facility has equipment to which 40 CFR part 264, subpart BB applies, you must keep the following information at your facility:

(a) For each piece of equipment to which 40 CFR part 264 subpart BB applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (*e.g.*, identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (*e.g.*, a pump or a pipeline valve).

(4) Percent by weight of total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (*e.g.*, gas/vapor or liquid).

(6) Method of compliance with the standard (*e.g.*, monthly leak detection and repair, or equipped with dual mechanical seals).

(b) For facilities that cannot install a closed-vent system and control device to comply with 40 CFR part 264, subpart BB on the effective date that the facility becomes subject to the subpart BB provisions, an implementation schedule as specified in 40 CFR 264.1033(a)(2).

(c) Documentation that demonstrates compliance with the equipment standards in 40 CFR 264.1052 and 264.1059. This documentation must contain the records required under 40 CFR 264.1064.

(d) Documentation to demonstrate compliance with 40 CFR 264.1060 must include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by 40 CFR 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in 40 CFR 260.11) or other engineering texts acceptable to the Director that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in 40 CFR 264.1035(b)(4)(iii).

(4) A statement you signed and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonable expected to occur.

(5) A statement you signed and dated certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

**§ 270.315 What air emissions control information must I keep at my facility?**

If you have air emission control equipment subject to 40 CFR part 264,

subpart CC, you must keep the following information at your facility:

(a) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or (d)(2) that includes information you prepared or the cover manufacturer/vendor provided describing the cover design, and your certification that the cover meets applicable design specifications listed in 40 CFR 264.1084(e)(1) or (f)(1).

(b) Identification of each container area subject to the requirements of 40 CFR part 264, subpart CC and your certification that the requirements of this subpart are met.

(c) Documentation for each enclosure used to control air pollutant emissions from tanks or containers under requirements of 40 CFR 264.1084(d)(5) or 264.1086(e)(1)(ii). You must include records for the most recent set of calculations and measurements you performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(d) [Reserved]

(e) Documentation for each closed-vent system and control device installed under requirements of 40 CFR 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d).

(f) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan must include the following information: monitoring point(s), Monitoring methods for control devices, monitoring frequency, procedures for documenting exceedences, and procedures for mitigating noncompliances.

**Modifying a Standardized Permit**

**§ 270.320 How do I modify my RCRA standardized permit?**

You can modify your RCRA standardized permit by following the procedures found in 40 CFR 124.211 through 124.214.

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