



# Federal Register

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**Thursday,  
January 17, 2002**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Part 260, et al.**

**Resource Conservation and Recovery Act  
Burden Reduction Initiative; Proposed  
Rule**

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271

[FRL-7123-9]

RIN 2050-AE50

### Resource Conservation and Recovery Act Burden Reduction Initiative

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to reduce the recordkeeping and reporting burden the Resource Conservation and Recovery Act (RCRA) imposes on the states, the public, and the regulated community. The burden reduction ideas proposed today will have no anticipated impact on the protections for human health and the environment we have established. At the same time, our proposals will eliminate non-essential paperwork.

In a **Federal Register** "Notice of Data Availability" published June 18, 1999, we asked for comment on an initial set of burden reduction ideas. In today's action, we are proposing for rulemaking many of these ideas.

**DATES:** Written comments must be received by April 17, 2002.

**ADDRESSES:** If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing Docket Number F-1999-IBRA-FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view public comments and supporting materials in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703-603-9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost \$ 0.15 per page. For information on accessing an electronic copy of the data base, see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA

Hotline at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 am to 6 pm, Eastern Standard Time. For more information on specific aspects of this proposed rule, contact Mr. Robert Burchard at 703-308-8450, [burchard.robert@epa.gov](mailto:burchard.robert@epa.gov), write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

#### SUPPLEMENTARY INFORMATION:

##### Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: [rcra-docket@epamail.epa.gov](mailto:rcra-docket@epamail.epa.gov). You should identify comments in electronic format with the docket number F-1999-IBRA-FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the 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 RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If you do not submit comments electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential that you specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to protect the diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

#### Accessing Electronic Data

Background information materials for this Notice are available on the Internet. Follow the instructions below to access these materials electronically:

**WWW:** <http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction>.

**FTP:** <ftp://ftp.epa.gov>.

**Login:** anonymous.

**Password:** Your Internet address. Files are located in `/pub/epaoswer`.

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## Regulatory Language

### I. Background and Purpose of Today's Proposed Rulemaking

#### A. Why Are We Reducing Burden?

To meet the federal government-wide goal established by the Paperwork Reduction Act (PRA), we plan to reduce the burden imposed by our reporting and recordkeeping requirements. Burden is the time that a state employee, member of the regulated community, or private citizen spends generating and reporting information to us and keeping records. The PRA establishes a federal government-wide goal of reducing burden 40 percent from the total burden imposed annually on September 30, 1995.

#### B. How Is Burden Estimated?

We estimate burden by first listing the activities undertaken to collect and organize information in response to our regulations, report the information, or keep it as records. For each activity, we then estimate the time in hours it takes an average respondent to complete the information request, taking into account differences such as facility size and amount of information required. Next, we verify these estimates through consultations with affected parties. These hour estimates are then multiplied by the number of people or entities expected to complete the information collection. The results of these analyses are the basis for our Information Collection Requests, which are published in the **Federal Register**.

#### C. What Is the Baseline for the Resource Conservation and Recovery Act (RCRA) Paperwork Requirements?

On September 30, 1995, the baseline for the PRA, the burden imposed by RCRA regulation was 12,600,000 hours per year. Forty per cent reduction from the baseline is 7,560,000 hours per year. This proposed rule will eliminate 929,000 hours. Coupled with reductions that have occurred, and reductions that are planned, we expect to reduce our burden by 47% from 1995.

#### D. What Is the Resource Conservation and Recovery Act (RCRA) Burden Reduction Initiative and What Have We Done to Date?

There have already been substantial burden reduction efforts in implementing the Resource Conservation and Recovery Act (RCRA), such as for the Land Disposal Restrictions and Used Oil programs. We have already achieved reductions of close to five million burden hours.

And there are other ongoing, proactive burden reduction efforts such

as revisions to the Hazardous Waste Manifest system, including allowing manifests to be sent electronically, development of a standardized permit for selected RCRA facilities, and a major information system overhaul through the Waste Information Needs (WIN) Initiative.

The WIN Initiative is a multi-year project which is reinventing RCRA information management. It operates as a partnership among EPA Headquarters, EPA Regions, and the states. Both information management experts and implementers of hazardous waste programs participate in the Initiative.

The WIN Initiative began by identifying the information needed to carry out the activities of the RCRA program, assessing the reliability and accessibility of current information systems that support these activities, projecting future information needs, and analyzing what the needed information technologies will be. It is now implementing information change, starting with the Biennial Report, Notification, and part A permit application requirements.

The standardized permit, which was proposed on October 12, 2001 (66 FR 52191), would be available to facilities that generate hazardous waste and then manage the waste in on-site units such as tanks, containers, and containment buildings. The standardized permit would streamline the entire permitting process.

Revisions to the Hazardous Waste Manifest include standardizing the content and appearance of manifest forms and allowing waste handlers to complete, send, and store manifest information electronically.

Additionally, we have combined our two main databases of hazardous waste information (the Biennial Report and the Resource Conservation and Recovery Information System—RCRIS) into a new database, named "RCRAInfo", which will provide easier and faster access to the information we collect.

These are part of the Agency's efforts to comprehensively reform and improve RCRA information management. This process has asked the questions: Who uses hazardous waste information, why do they need it, is the information useful as it is currently collected, and how can the quality and timeliness of the information be improved?

Over the past three years, the RCRA Burden Reduction Initiative has reviewed and analyzed all RCRA reporting and recordkeeping requirements. We have developed ideas for eliminating or streamlining many of them. We obtained input from program

offices at EPA Headquarters, the EPA Regions, and state experts on the validity of the ideas, and whether the ideas would detract from our mission to protect human health and the environment. This input was obtained through almost twenty intensive information gathering sessions and workgroup meetings. We also had the assistance of EPA's Office of Inspector General, which made field visits to see whether certain records required by regulation are kept and used by regulatory authorities. The ideas for the Land Disposal Restrictions changes we are proposing today came from a series of information gathering roundtables on the Land Disposal Restrictions program sponsored by the Agency that brought together EPA, state implementors, the regulated community, and environmental groups.

Our ideas were first announced for comment in a June 18, 1999 **Federal Register** "Notice of Data Availability" (64 FR 32859). In the "Notice" and background documents (which are available on the Internet), we included every burden reduction idea we considered. We received 36 comments, all of which were taken into consideration when developing today's proposal. Based on comments we received on the "Notice", we dropped a number of burden reduction ideas. Ideas were dropped when a commenter demonstrated a practical use for the information, or where they presented a specific example of how an idea would negatively impact human health and the environment. Based on these comments, we also added some additional ideas which appear in today's proposal.

We discussed our burden reduction plans in public forums, including a national public meeting in April 2000, sponsored by the Office of Management and Budget on reinventing government, a national meeting of states sponsored by the Association of Territorial and Solid Waste Management Officials, several industry-outreach roundtables, and a meeting with a coalition of environmental groups. At these forums, we invited discussion of the same questions we had posed in the "Notice of Data Availability". We received no specific information from meeting participants indicating that human health and the environment would be impaired if our burden reduction ideas were implemented.

#### E. How Can I Influence EPA's Thinking on This Rule?

We invite comment on all aspects of this proposal. We specifically want comment on: How will this proposal affect users of environmental

information, particularly the public? Are any of the regulations we are proposing to eliminate crucial to protecting human health and the environment? What kinds of information do people need to protect public health and the environment, and how can they get it most efficiently? Most importantly, what information is actually used? Although a very broad range of information might be theoretically useful to regulators and the public, it is our understanding that much of the information we have required to be collected and reported is not accessed or used on a regular basis for protecting human health and the environment. At this point, twenty years into the RCRA program, we would like our information requirements to reflect demonstrated needs.

We plan to implement the ideas in today's proposal in a final rulemaking, and your comments will play an important part in our decision-making process.

If you have any comments on this proposal, you must submit them even if you already submitted comments on the "Notice of Data Availability." Today's proposed rule responds to the comments we received on the NODA, and we will assume that any concerns identified in the comments on the NODA have been addressed unless we hear otherwise.

In developing this proposal, we tried to address the concerns of our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views clearly, and why you feel that way.
- Provide technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those that you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Submit your comments by the deadline in this Notice.
- Include your name, date, and docket number with your comments.

## II. Our Main Burden Reduction Proposals

### A. We Propose To Reduce the Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)

We require the submittal of 334 different types of notifications, reports, certifications, demonstrations, and plans from generators and TSDFs to show compliance with the RCRA regulations. We also ask for this information as part of applications for extensions, permits, variances, and exemptions. A study done by the Chemical Manufacturers Association showed that as with the other major environmental statutes implemented by EPA—such as The Clean Air Act and The Clean Water Act—RCRA imposes a large number of reporting requirements.

When we crafted our regulations, we decided to collect as much information as possible about facility operations. Without prior experience as a guide, our philosophy was that it was better to collect information in all cases, knowing that we could eliminate information requirements later if they turned out to not be useful.

Given that we now have 20 years of operating history in RCRA, we have decided to use this proposed rulemaking to step back and reevaluate based on actual experience whether this level of information collection is necessary. And if not, whether we can reduce paperwork while ensuring that public health and environmental protection continues. Doing so will ease some of the unnecessary bureaucratic controls we have established.

Based on comments we received on the "Notice of Data Availability," our own analysis (which consisted of interviews with Agency experts, consulting with stakeholders, and professional judgement in weighing the qualitative costs and benefits of the ideas), and an analysis conducted by EPA's Office of Inspector General (discussed above), we identified approximately one third of the 334 reporting requirements for elimination or modification.

We developed two criteria for determining which reports to keep, cut, or modify, to the extent there was no indication from our outreach activities and analysis that protection of human health and the environment would be affected in any way: (1) Reporting should occur for information about the opening and closing of a facility, along with informational updates such as financial assurance updates and the Biennial Report submission, and, (2) reporting on the majority of the day-to-

day functions of a facility is unnecessary. Although oversight of hazardous waste facilities on a day-to-day basis is important, many of the various notices now required are not used in assessing the protectiveness of facility operations, and some are simply redundant. One of the measures we used to determine this was whether the information was put into a database by regulatory authorities.

The bulk of the reports we propose cutting or modifying are reports notifying the regulatory agency that some other regulatory requirement (such as complying with a technical standard for the operation of a treatment unit) was performed. Other reports we propose to cut are instances when a facility has to notify the regulatory authorities twice about something that happened at the facility. Requiring a double notification is overly burdensome and does not appreciably improve protection of human health and the environment.

Our proposal maintains facility accountability and responsibility. It still has a facility undertaking the basic environmentally protective activities that are in the regulations—it just won't have to submit a report to the regulatory authority that each activity was completed. And, it will still have to record what happens at the facility in the operating record.

Through this proposal, we hope to focus attention on those critical reports regulators really need to have to ensure protection of human health and the environment.

We are not curtailing the right of regulatory agencies to request and receive any information. We are simply saying that facilities no longer have to send in many of the reports they currently have to submit on a regular basis.

We are not cutting back the government's or the public's ability to know what is happening at a facility, and whether environmentally protective activities are still occurring, because a basic set of compliance information will still be at the facility (in the facility's operating record). This information can be examined by regulatory authorities and then shared with the public. And, another set of information about a facility (how much waste they generate and what is done with it) will still be readily accessible to the public via Agency Web sites and Web sites run by non-Agency organizations such as the Right-to-Know Network ([www.rtknet.org](http://www.rtknet.org)).

Many of the notices and reports we propose eliminating are obscure and only rarely needed to be sent to

regulatory authorities. They are the kind of notices and reports that, based on our outreach and information gathering, are little, if at all, used by the public.

Please review the regulatory language that is part of today's rulemaking for the specific changes we are proposing to existing regulatory requirements. If commenters believe that any of the notices or reports we are proposing to eliminate are necessary, they should provide specific examples of how the

information has been used to address a human health or environmental problem. And, if commenters have a different way to identify which reports to eliminate or modify, they should let us know.

The following chart contains all of the reporting and recordkeeping requirements we propose to eliminate or modify. The first column shows the requirement and what we propose to do with it. The second column provides the

regulatory citation that implements the requirement. The Code of Federal Regulations (CFR) is a publication containing all federal regulations. EPA's regulations are in 40 CFR.

We are interested in whether or not any of these items have an existing, specific, and demonstrable use to the public or regulators. In your comments, please provide specific examples of how this information is used, and whether it is stored in an accessible database.

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION

Requirement	40 CFR (Code of Federal Regulations) citation
Submit report on industry-wide prevalence of the material production process: Eliminate—Regulatory authorities can decide whether to give a variance from classification as a solid waste without this information.	260.31(b)(2).
Exclusion—Submit one-time notification for recycled wood-preserving wastewaters and spent wood-preserving solutions: Eliminate—an unnecessary requirement. According to an EPA expert, this requirement now has limited use for regulators. Also, this proposed change does not affect the other, existing, protective regulatory requirements.	261.4(a)(9)(iii)(E).
Submit report estimating the number of studies and amount of waste to be used in treatability studies: Eliminate—an unnecessary requirement, since this information is provided to the regulatory agency at a later date, meaning that the information has to be supplied by the facility twice (an unnecessary duplication). Plus, according to EPA staff experts, these estimates are not usually accurate.	261.4(f)(9).
Exclusion—Generator submit a one-time comparable/syngas fuel notice to the permitting agency: Eliminate—an unnecessary requirement given the subsequent public notice regulatory requirements (where this information is also submitted). Plus, we are not eliminating the overall regulatory requirements for burning, blending, generation, sampling, etc.	261.38(c)(1)(i)(A).
Personnel training requirements—training program: Eliminate the RCRA requirements, and have facilities follow Occupational Safety and Health Administration standards, which are more comprehensive. This is an area of overlap that has been identified in a comprehensive study of federal personnel training requirements by the General Accounting Office.	264.16(a)(3).
Personnel training requirements—record job title: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that the job title doesn't necessarily correspond to the work the employee does, and has little bearing on whether the employee is capable of doing the job safely.	264.16(d)(1).
Personnel training requirements—record job description: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that this requirement has little bearing on whether the employee is capable of doing the job safely.	264.16(d)(2).
Personnel training requirements—record type and amount of training that will be provided: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that this requirement isn't necessarily a good indicator of whether an employee is capable of doing the job safely.	264.16(d)(3).
Contingency Plan—Coordination with other plans: Modify—Plan should be based on the One Plan guidance, which will eliminate the need to prepare multiple contingency plans for Agency requirements.	264.52(b).
Emergency Procedures—Notify Regional Administrator that facility is in compliance with 264.56(h) before resuming operations: Eliminate—an unnecessary requirement. This is a notification to the regulatory Agency that the emergency coordinator has ensured that no incompatible waste is being treated at the site and that the emergency equipment is ready to use again. This emergency coordinator does not need to have this notification to ensure that these tasks are done. The environmentally protective activities are still in place, and are documented in the facility operating record, as well as documented by the emergency coordinator.	264.56(i).
Operating record: Maintain operating record for facility Modify amount of time most of the information in operating records have to be kept—three years instead of for the life of the facility. We are proposing this to standardize our record retention requirements.	264.73(b).
Standards for Solid Waste Management Units Remove obsolete language .....	264.90(a)(2).
Detection Monitoring (Permitted Facilities)—Conduct and maintain ground-water monitoring: Modify—We plan to introduce flexibility by allowing sampling for a smaller subset of constituents from the Appendix IX list of constituents. This idea originated from state staff with field experience.	264.98(c).
Detection Monitoring (Permitted Facilities)—Prepare and submit the notification of contamination: We are taking comment on eliminating this requirement (but we are not proposing this in today's rule)—this has been identified through our review of the regulations as a duplicative requirement. The owner/operator must still sample groundwater wells for hazardous constituents (this is required by regulation) and also submit a permit modification to the Regional Administrator that establishes a compliance monitoring program for the constituents. This should be sufficient to protect human health and the environment.	264.98(g)(1).
Detection Monitoring (Permitted Facilities)—Prepare and submit an engineering feasibility plan for corrective action, if required: Modify—Our review of the regulations identified this requirement as one that could be switched from having to send it to the regulatory authority to just keeping it as part of the facility operating record. Our rationale is that this information will be available at the facility for inspectors to see, and that the facility operator still has to undertake the environmentally protective actions described in the regulation.	264.98(g)(5)(ii).

## RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Detection Monitoring (Permitted Facilities)— Prepare and submit notification of intent to make a demonstration: Modify—make part of operating record instead of sending it to the regulatory authority. This information will be available at the facility for inspectors to see. Additionally, this kind of information is also provided to the regulatory authorities in the permit modification submitted under 264.98(g)(6)(iii).	264.98(g)(6)(i), (ii).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of new constituent concentrations: Modify—number of wells, samples, and constituents will be determined on a case-by-case basis, instead of for all wells. This idea came from state experts, and is based on their field experience that sampling all wells can be unnecessary.	264.99(g).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of exceeded concentration limits: Eliminate—this has been identified through our review of the regulations as a duplicative requirement, since this information is later included as part of a permit modification that must be submitted under 264.99(h)(2).	264.99(h)(1).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of intent to make a demonstration: Eliminate—this has been identified through our review of the regulations as a duplicative requirement, since the Regional Administrator will get the same information through the 264.99(i)(3) permit modification.	264.99(i)(1), (2).
Closure (Permitted Facilities)—Submit semi-annual corrective action report: Modify—report only needs to be submitted annually, instead of semi-annually. According to staff experts at the Agency, annual reports will be sufficient to ensure protection of human health and the environment.	264.113(e)(5).
Certification of Closure: We are taking comment on (but we are not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of performing this certification.	264.115.
Certification of Completion of Post-Closure Care: Modify—certification can be by a Certified Hazardous Materials Manager, who will have sufficient education and skill to make this certification.	264.120.
Containers—Inspection frequency: Allow self-inspection frequencies to be changed, on a case-by-case basis. Based on comments from states and the regulated community, we want to provide flexibility in inspections for well-performing facilities.	264.174.
Assessment of existing tank system's integrity: Modify—assessment can be made by a Certified Hazardous Materials Manager, who will have sufficient education and skill to do this certification.	264.191(a), (b)(5)(ii).
Assessment of new tank system and components: Modify—can be made by a Certified Hazardous Materials Manager, who will have sufficient education and skill to do this certification. And, this assessment may be retained on-site.	264.192(a), (b).
Containment and detection of releases: Remove obsolete language .....	264.193(a), (a)(1)–(5).
Leak Detection System for Tanks: Eliminate need for demonstrations to the regulatory authorities, and make this requirement self-implementing. The owner or operator is in the best position to make the determination as to what is the earliest practical time, based on the site characteristics.	264.193(c)(3), (c)(4), (e)(3)(iii).
Variance from Leak Detection Systems for Tanks: Eliminate need to obtain variance, and make this provision self-implementing. The owner or operator can implement alternate design and operating practices as long as they follow the requirements of this section.	264.193(g), (h).
Tank Systems (Permitted)—Inspection frequency: Change frequency to weekly. Based on comments and the existence of substantial safety features required by regulation, this change will have little negative impact on human health and the environment. Also, inspections may be less frequent than weekly, as determined on a case-by-case basis by regulatory authorities.	264.195(b).
Tank Systems (Permitted)—Notify EPA of release and submit report: Eliminate—the existing regulatory requirements for cleanup and certification of the cleanup are adequately protective; this extra notification to the regulatory authorities is unnecessary. This information will be retained in the facility records.	264.196(d)(1)–(3).
Tank Systems (Permitted)—Submit certification of completion of major repairs: Eliminate requirement to submit certification—we do not ask for certifications to be submitted for other kinds of repairs; there is no special reason for this certification to be submitted. Also, the certification may be made by a Certified Hazardous Materials Manager.	264.196(f).
Surface Impoundments (Permitted)—Notify EPA in writing if flow rate exceeds action leakage rate (ALR) for any sumps within 7 days: Eliminate—an unnecessary requirement as long as action is taken to stop leaks; action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(1).
Surface Impoundments (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(2).
Surface Impoundments (Permitted)—Submit information to EPA each month the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(6).
Waste Piles (Permitted)—Installation of liners and leachate collection systems after January 29, 1992: Eliminate—obsolete language.	264.251(c).
Waste Piles (Permitted)—Notify EPA in writing of the exceedance amount of the leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(1).
Waste Piles (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(2).
Waste Piles (Permitted)—Compile and submit information to EPA each month that the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(6).

## RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Land Treatment (Permitted)—Prepare and submit a notice of statistically significant increases in hazardous constituents below treatment zone: Eliminate—a duplicative requirement since this information will be in the permit modification that has to be submitted if this event happens. The regulatory authorities do not need to be notified twice.	264.278(g)(1).
Land Treatment (Permitted)—Prepare and submit notice of intent to make a demonstration that other sources or error led to increases below treatment zone: Eliminate—an unnecessary requirement since this information will be in the permit modification that has to be submitted if this event happens. The regulatory authorities do not need to be notified twice.	264.278(h)(1), (2).
Land Treatment (Permitted)—Certification of closure: We are taking comment on (but not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of doing this certification.	264.280(b).
Land Fills (Permitted)—Notify EPA if action leakage rate is exceeded within 7 days of determination: Eliminate—an unnecessary requirement as long as the procedures in the response action plan (a response action plan is regulatorily required) are followed.	264.304(b)(1).
Land Fills (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the procedures in the response action plan are followed. Response action plans are required by regulation.	264.304(b)(2).
Land Fills (Permitted)—Submit information to EPA each month the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as the procedures in the response action plan are followed. Response action plans are required by regulation.	264.304(b)(6).
Special Requirements for Bulk and Containerized Liquids: Remove obsolete language .....	264.314(a)(1), (a)(2), (b), (f).
Incinerators (Permitted)—Submit notification of intent to burn hazardous wastes F020, F021, F022, F023, F026, F027: Eliminate—an unnecessary requirement since the facility is already permitted to burn this waste, and since there are already regulatory standards governing how the waste is burned.	264.343(a)(2).
Drip Pads (Permitted)—Submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad: Modify—in addition to an independent, registered professional engineer, these activities may also be done by a Certified Hazardous Materials Manager.	264.571(a), (b), (c).
Drip Pads (Permitted)—Evaluate drip pads: Modify—in addition to an independent, registered professional engineer, this evaluation may also be done by a Certified Hazardous Materials Manager.	264.573 (a)(4)(ii), (g).
Drip Pads (Permitted)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement as long as response actions described in (m)(1)(i)–(iii) of this part are taken. Information relevant to the happenings at the drip pad will be retained in the facility record.	264.573(m)(1)(iv).
Drip Pads (Permitted)—EPA makes determination about removal of pad: Eliminate—an unnecessary requirement as long as response actions described in (m)(1)(i)–(iii) of this part are undertaken. Information relevant to the drip pad activities will be retained in the facility record.	264.573(m)(2).
Drip Pads (Permitted)—Notify EPA and certify completion of repairs: Eliminate—an unnecessary requirement as long as cleanup and repairs described in the regulations of this part are made. Information relevant to the drip pad activities will be retained in the facility record.	264.573(m)(3).
Drip Pads (Permitted)—Inspections: Modify—in addition to an independent, registered professional engineer, these inspections may be done by a Certified Hazardous Materials Manager.	264.574(a).
Process Vents (Permitted)—Submit semi-annual report of control device monitoring events to the Region: Eliminate need to submit report—an unnecessary requirement given the detailed recordkeeping required by 264.1035. The 264.1035 information will be retained on-site for regulators to examine.	264.1036.
Equipment Leaks (Permitted)—Submit notification to implement the alternative valve standard: Eliminate—an unnecessary requirement since the relevant information will be retained in the facility record.	264.1061(b)(1).
Equipment Leaks (Permitted)—Submit notification to discontinue alternative valve standard: Eliminate—an unnecessary requirement since there are standards that must be followed if the regular standards are going to be followed. Relevant information will be retained in the facility record.	264.1061(d).
Equipment Leaks (Permitted)—Submit notification to implement alternative work practices for valves: Eliminate—an unnecessary reporting requirement as long as standards are followed. Relevant information will be retained in the facility record for regulators to examine.	264.1062(a)(2).
Equipment Leaks (Permitted)—Submit a semi-annual report with record of equipment, shutdowns, and control device monitoring events: Eliminate—an unnecessary requirement. The 264.1064 recordkeeping requirements will provide adequate information. The 264.1064 information will remain on-site for regulators to examine.	264.1065.
Containment Buildings (Permitted): Remove obsolete language .....	264.1100.
Containment Buildings (Permitted)—Obtain certification that building meets requirements: Modify—in addition to an independent, registered professional engineer, the certification may be made by a Certified Hazardous Materials Manager.	264.1101(c)(2).
Containment Buildings (Permitted)—Notify EPA of condition that has caused a release and provide schedule for cleanup: Eliminate—an unnecessary requirement since repair of containment building must occur anyway. Information about this situation will be available in the facility record for regulators to inspect.	264.1101(c)(3)(i)(D).
Containment Buildings (Permitted)—Notify EPA and verify in writing that the cleanup and repairs have been completed after a release: Eliminate—an unnecessary requirement. EPA does not get involved in similar decisions about whether other parts of a facility need to be removed from service. Information about this situation will be available in the facility records for regulators to inspect.	264.1101(c)(3)(ii), (iii).
Containment Buildings (Permitted)—Inspection frequency: Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	264.1101(c)(4).
Purpose, Scope, and Applicability: Remove obsolete language .....	265.1(b).
Personnel Training—Emergency response: Eliminate and replace with Occupational Safety and Health Administration requirements, which are more comprehensive than the RCRA requirements.	265.16(a)(3).

## RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Personnel Training—Record job titles: Eliminate—an unnecessary requirement—from information we received from the field, the job title doesn't necessarily correspond to the work the employee does, and has little bearing on whether the employee is capable of doing the job safely.	265.16(d)(1), (2).
Personnel Training—Description of type and amount of training each employee will receive: Eliminate—from information we received from the field, this requirement is not necessarily a good indicator of whether an employee is capable of doing the job safely.	265.16(d)(3).
Contingency Plans—Coordination with other plans: Modify—Facilities should follow the One Plan guidance, which is designed to eliminate overlap between different regulatory requirements for contingency plans. This proposal has been endorsed by a recent General Accounting Office report on worker protection.	265.52(b).
Emergency Procedures—Notify Regional Administrator that facility is in compliance with 265.56(h) before resuming operations: Eliminate—an unnecessary requirement. This is a notification to the regulatory Agency that the emergency coordinator has ensured that no incompatible waste is being treated at the site and that the emergency equipment is ready to use again. This emergency coordinator does not need to have this notification to ensure that these tasks are done. The environmentally protective activities are still in place, and are documented in the facility operating record, as well as documented by the emergency coordinator.	265.56(i).
Operating Record—Keep operating record for facility: Modify the amount of time most records have to be kept; three years instead of for the life of the facility. This will standardize the RCRA record retention time requirements, eliminating confusion about how long records have to be kept.	265.73(b).
Ground-water Monitoring (Interim Status Facilities)—Submit alternate ground-water monitoring plan: Modify—no need to submit plan to Regional Administrator, it can be kept onsite where it will be available for regulators to inspect.	265.90(d)(1).
Ground-water Monitoring (Interim Status Facilities)—Submit report: Modify—no need to submit report to Regional Administrators. It can be kept on-site, where it will be available for regulators to inspect.	265.90(d)(3).
Ground-water Monitoring (Interim Status Facilities)—Submit notification of increased indicator parameter concentrations: Modify—no need to submit reports; this information will be noted as part of the groundwater quality assessment program.	265.93 (c)(1), (d)(1).
Ground-water Monitoring (Interim Status Facilities)—Submit information for ground-water quality assessment plan: Modify—no need to submit information. It may be maintained on-site, where it will be available for regulators to inspect.	265.93(d)(2).
Ground-water Monitoring (Interim Status Facilities)—Develop and submit ground-water quality assessment reports: Modify—no need to submit these reports given other regulatory requirements in this part, which give detailed instructions on assessments and cleanups.	265.93(d)(5), (e), (f).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a quarterly report of concentrations of values of the drinking water suitability parameters: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(i).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on indicator parameter concentrations and evaluations: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(ii).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on ground-water surface elevations: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(iii).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on the results of the ground-water quality assessment program: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(b)(2).
Closure (Interim Status Facilities)—Submit semi-annual corrective action report: Modify—according to Agency staff experts, regulators will have sufficient information if these reports are sent in annually instead of semi-annually.	265.113(e)(5).
Certification of Closure: We are taking comment on (but we are not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of performing this certification.	265.115.
Certify completion of post-closure care: Modify—in addition to an independent, registered professional engineer, this certification may be made by a Certified Hazardous Materials Managers.	265.120.
Container Inspection Frequency: Modify—allow regulators to modify the self-inspection frequency for well-performing facilities on a case-by-case basis.	265.174.
Assessment of Existing Tank System's Integrity: Modify—in addition to an independent, registered professional engineer, this assessment may be done by Certified Hazardous Materials Managers.	265.191(a), (b)(5)(ii).
Design and Installation of New Tank Systems or Components—assessment of structural integrity and acceptability for storing and treating waste: Modify—in addition to an independent, registered professional engineer, this assessment may be done by Certified Hazardous Materials Managers.	265.192(a).
Design and Installation of New Tank Systems or Components—assessment of tank installation: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.192(b).
Tank Systems (Interim Status): Remove obsolete language .....	265.193(a).
Tank Systems (Interim Status)—Demonstrate to EPA that technology and site conditions do not allow detection of release within 24 hours: Eliminate this demonstration. Having a functional leak detection system capable of detecting a release within 24 hours or the earliest practicable time, coupled with the tank design requirements, is adequately protective.	265.193(e)(3)(iii).
Tank Systems (Interim Status)—Obtain variance to use alternate tank design and operating practices: Eliminate the need to obtain a variance and make this self-implementing. Records are to be kept on-site describing the decisionmaking.	265.193(g)(1), (h).
Tank Systems (Interim Status): Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	265.195(a).



## RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Tank Systems (Interim Status)—Notify EPA of release: Eliminate—the existing regulatory requirements for cleanup and certification of the cleanup are adequately protective; this extra notification to the regulatory authorities is unnecessary. This information will be retained in the facility record.	265.196(d)(1), (d)(2).
Tank Systems (Interim Status)—Submit report describing releases: Eliminate—the cleanup requirements in the regulations and the need to certify (required by 265.196(f)) is sufficient to protect human health and the environment.	265.196(d)(3).
Tank Systems (Interim Status)—Submit certification of completion of major repairs: Eliminate requirement to submit certification—we do not ask for certifications to be submitted for other kinds of repairs; there is no special reason for this certification to be submitted. Also, this certification may be done by a Certified Hazardous Materials Manager.	265.196(f).
Surface Impoundments (Interim Status): Remove obsolete language .....	265.221(a).
Surface Impoundments (Interim Status)—Submit the Response Action Plan to EPA: Eliminate—Response Action Plans for other kinds of treatment units are not submitted to EPA. We are proposing that it is sufficient to keep this Plan on-site.	265.223(a).
Surface Impoundments (Interim Status)—Notify EPA in writing if flow rate exceeds action leakage rate for any sumps within 7 days: Eliminate—an unnecessary requirement since the facility still has to address the leakage and record its response to the leakage in the facility record, which is available for inspection by regulators.	265.223(b)(1).
Surface Impoundments (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement since the facility still has to address the leakage and record its response to the leakage in the facility record, which is available for inspection by regulators.	265.223(b)(2).
Surface Impoundments (Interim Status)—Compile and submit information to EPA each month the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement since information about the leak will be kept onsite, where it is available for inspection by regulators.	265.223(b)(6).
Waste Piles (Interim Status)—Submit the Response Action Plan to EPA: Eliminate—an unnecessary requirement since other treatment units do not have to submit this plan. Removing this requirement will bring consistency to the regulations.	265.259(a).
Waste Piles (Interim Status)—Notify EPA in writing of the exceedance amount of the leakage: Eliminate—an unnecessary requirement as long as Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(1).
Waste Piles (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(2).
Waste Piles (Interim Status)—Submit information to EPA each month that the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(6).
Land Treatment (Interim Status)—Submit notification for food-chain crops at land treatment facility: Eliminate—an unnecessary requirement as long as the other regulatory requirements in 265.276 are followed. Information about compliance with these other regulatory requirements will be in the facility operating record.	265.276(a).
Landfills (Interim Status)—Remove obsolete language .....	265.301(a).
Land Fills (Interim Status)—Submit the Response Action Plan to EPA: Eliminate requirement to submit plan. Developing a plan, keeping it onsite, and implementing it when necessary is sufficient.	265.303(a).
Land Fills (Interim Status)—Notify EPA if action leakage rate is exceeded within 7 days of determination: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed and information on adherence to the Plan is kept in the facility operating record, where it will be available for inspection by regulators.	265.303(b)(1).
Land Fills (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the Response Plan is followed and information on adherence to the Plan is kept in the facility operating record, where it will be available for inspection by regulators.	265.303(b)(2).
Land Fills (Interim Status)—Submit information to EPA each month the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as the remediation required by regulation takes place, and information about the remediation is kept in the facility record.	265.303(b)(6).
Requirements for bulk and containerized liquids: Remove obsolete language .....	265.314(a), (a)(1), (a)(2), (b), (g).
Drip Pads (Interim Status)—Assessment of Drip Pad, Submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad: Modify—in addition to an independent, registered professional engineer, certification may be made by a Certified Hazardous Materials Manager.	265.441(a), (b), (c).
Drip Pads (Interim Status)—Assessment of Drip Pad: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.443(a)(4)(ii), (g).
Drip Pads (Interim Status)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement as long as cleanup required by regulation takes place, and is recorded in the facility operating record, where it will be available for inspection by regulators.	265.443(m)(1)(iv), (2).
Drip Pads (Interim Status)—Notify Regional Administrator and certify completion of repairs: Eliminate—an unnecessary requirement as long as the required cleanup and repairs are made.	265.443(m)(3).
Drip Pads (Interim Status)—Inspection of liners: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.444(a).
Equipment Leaks (Interim Status)—Submit notification to implement the alternative valve standard: Eliminate—an unnecessary requirement as long as other regulatory requirements in 265.1061 are followed.	265.1061(b)(1).

## RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Equipment Leaks (Interim Status)—Submit notification to discontinue alternative valve standard: Eliminate—an unnecessary requirement. Owners or operators can decide which standard to meet without notifying the Agency. This information will be retained in the facility's operating record, where it will be available for inspection by regulatory authorities.	265.1061(d).
Equipment Leaks (Interim Status)— Submit notification to implement alternative work practices for valves: Eliminate—an unnecessary requirement. Owners or operators may use alternative work practice without notifying the Agency. This information will be kept in the facility operating record, which is available for regulatory authorities to inspect.	265.1062(a)(2).
Containment Buildings (Interim Status)—Notify EPA of intent to be bound by the regulations earlier than as specified in section 265.1100: Eliminate—an obsolete requirement.	265.1100.
Containment Buildings (Interim Status)—Obtain certification that building meets design requirements: Modify—in addition to an independent, registered professional engineer, this certification can be done by a Certified Hazardous Materials Manager.	265.1101(c)(2).
Containment Buildings (Interim Status)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement to notify regulatory authorities about a cleanup that must be done by regulation. Records of the cleanup will be in a facility's operating record, which is available for inspection by regulatory authorities.	265.1101(c)(3)(i)(D).
Containment Buildings (Interim Status)—Notify EPA and verify in writing that the cleanup and repairs have been completed: Eliminate—an unnecessary requirement as long as cleanup required by regulation takes place. This information will be maintained in the operating record, which is available for inspection by regulators.	265.1101(c)(3)(ii), (iii).
Containment Buildings—Interim Status: Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	265.1101(c)(4).
Boilers and Industrial Furnaces (Permitted)—Recordkeeping: Modify—records only have to be kept for three years, making this record retention time consistent with other treatment units. Bringing consistency to record retention times will assist facilities in complying with our regulations.	266.102(e)(10).
Boilers and Industrial Furnaces (Interim Status)—Evaluation of data and making determinations: Modify—in addition to an independent, registered professional engineer, this evaluation can be made by a Certified Hazardous Materials Manager.	266.103(b)(2)(ii)(D).
Boilers and Industrial Furnaces (Interim Status)—Periodic recertifications of compliance: Modify—extend period of time from three to five years, which Agency field staff believe is sufficient for regulatory purposes.	266.103(d).
Boilers and Industrial Furnaces (Interim Status)—Recordkeeping: Modify—records only have to be kept for three years, making this record retention time consistent with other treatment units. Bringing consistency to record retention times will assist facilities in complying with our regulations.	266.103(k).
Direct Transfer Equipment—Assessment of equipment: Modify—in addition to an independent, registered professional engineer, this assessment can be done by a Certified Hazardous Materials Manager.	266.111(e)(2).
Storage of Solid Waste Military Munitions—Notification of loss or theft: Simplify notification process—there is no need to notify the regulatory authorities twice.	266.205(a)(1)(v).
LDR Generator Requirements—Generator waste determination: Eliminate—a separate determination is unnecessary. See discussion in proposed rule preamble.	268.7(a)(1).
LDR Generator Requirements—Generator waste determination: Eliminate—because we are eliminating 268.7(a)(1), this record retention requirement is unnecessary.	268.7(a)(6).
LDR Treatment Facility Requirements—Submit a recycling notice and certification to EPA: Modify—keep information on-site. See discussion in proposed rule preamble.	268.7(b)(6).
LDR Hazardous Debris Requirements—Submit notification of claim that debris is excluded from definition of hazardous waste: Modify—notification becomes one-time and remains on-site. See discussion in proposed rule preamble.	268.7(d)(1).
LDR Special Rules for Characteristic Wastes—Submit one-time notification: Modify—a separate determination is unnecessary. See discussion in proposed rule preamble.	268.9(a).
LDR Special Rules for Characteristic Wastes—Submit certification: Modify—keep information on-site. See discussion in proposed rule preamble.	268.9(d).
Part B Requirements for Tank Systems—Submit written assessment of structural integrity: Modify—in addition to an independent, registered professional engineer, this assessment may be done by a Certified Hazardous Materials Manager.	270.16(a).
Part B Requirements for Surface Impoundments—Assessment of structural integrity: Modify—in addition to a registered, independent professional engineer, this assessment may be made by a Certified Hazardous Materials Manager.	270.17(d).

*B. We Are Proposing Weekly Hazardous Waste Tank Inspections*

We are proposing to reduce the self-inspection frequencies for hazardous waste tanks from daily to weekly. Tank regulations are found in 40 CFR 264.190 and 265.190.

This proposal is based on three factors. First, other kinds of tanks are

required to be inspected at frequencies less than daily. These tanks have to meet criteria for protecting human health and the environment similar to those for hazardous waste tanks. For example, in the Underground Storage Tank Program, tanks containing petroleum or hazardous substances are only required to be monitored for releases every thirty days. Oil tanks

regulated under the Spill Prevention, Control and Countermeasure Program (SPCC) are required to be frequently observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas. It is up to the engineer who certifies the SPCC Plan how often these observations should occur.

Comments we received on the "Notice of Data Availability," as well as the outreach we did, support going from a daily to weekly inspection frequency. Commenters and an expert on tank systems made the point that the integrity and safety of hazardous waste tanks would not be compromised by reducing the daily inspection requirement to a weekly frequency. Several commenters pointed out that hazardous waste storage tanks, which have secondary containment, are even more protectively designed than process tanks which handle the same chemicals.

Additionally, the tanks are equipped with leak detection systems, and are subject to routine visual inspection by employees. Leak detection systems provide continuous surveillance for the presence of a leak or spill. Technically, they consist of wire grids, observation wells, and U-tubes containing thermal-conductivity or electrical-resistivity sensors, or vapor detectors. Visual inspection is effective for aboveground or vaulted tanks, and for other tanks where access to potentially leaking parts is available. Visual monitoring can also be effective for the inspection of ancillary equipment.

Upon detection of a leak, either through the leak detection system or visual observation, the owner or operator of the tank system must immediately stop the flow of hazardous waste, determine and rectify the cause of the leak, remove the waste, and contain releases to the environment.

Finally, tanks are simpler to design, construct, and manage than units such as combustion units or land disposal units, and therefore require less oversight than these more complicated units for assessing that they are performing protectively.

### *C. We Propose To Allow Facilities the Opportunity To Adjust the Frequency of Their Self-Inspections*

For containers, containment buildings, and tanks (in addition to moving their inspection frequency from daily to weekly), we are proposing to allow on a case-by-case basis decreased inspection frequencies (from the frequency currently required by regulation). The regulations for containers are found in 40 CFR 264.170 and 265.170; containment buildings in 40 CFR 264.1100 and 265.1100; and tanks in 40 CFR 264.190 and 265.190. In all cases, inspections would have to occur at least monthly. Decreased inspection frequencies would be established on a site-specific basis by the Directors of authorized states' hazardous waste programs, or by EPA.

Considerations for decreasing inspection frequencies will be based on factors such as: a demonstrated commitment by facility management to sound environmental practices, demonstrations of good management practices over the years (having a record of sustained compliance with environmental laws and requirements), demonstrated commitment to continued environmental improvement, demonstrated commitment to public outreach and performance reporting, the installation of automatic monitoring devices at the facility, and the chemical and physical characteristics of the waste being managed in the unit. States or EPA may also include a qualification that facilities must revert to the original inspection schedule if there are spills or releases.

Several states and a coalition of environmental groups and trade unions commented that they do not support any decrease in inspection frequency because of concerns that if inspection frequencies were decreased, the amount of time between a leak and its discovery would increase. If the factors described above are taken into account when extending the inspection frequencies, there will be little or no increase in the likelihood of an undetected release. These decreased inspection frequencies should only be offered to the safest and best-performing facilities. In addition, the proposed approach may reduce the likelihood of release by providing a financial incentive for companies to avoid releases in order to be approved for reduced inspection frequency.

We also received comments from the states expressing concern over the added administrative burden in implementing case-by-case changes to inspection frequencies. We are not mandating that states offer these changes. We are only providing the option to states that are interested.

Another group of commenters suggested that inspection frequency changes should be self-implementing. For example, an inspection schedule should be deemed approved if EPA does not specifically deny the request in writing within 30 days. Where we were able to identify an across-the-board change, like tanks going to weekly inspections, we did so. We think beyond that, a case-by-case evaluation of facility conditions is still necessary. It is important that regulatory agencies make the decisions to decrease inspection frequencies. Thus, we are not proposing the self-implementing option.

### *D. We Propose Reducing the Burden of RCRA Personnel Training Requirements and Eliminating an Overlap With Occupational Safety and Health Administration Training Requirements*

We currently require facilities to train their employees in facility operations and emergency response procedures. We also require a written job description for each employee. And, we require training records for current employees to be kept until closure of the facility. These requirements are found in 40 CFR 264.16 and 265.16. The idea behind these regulations is that trained employees are safe employees, and will be able to prevent releases of hazardous waste to the environment. By working with the Occupational Safety and Health Administration, we have developed an improved way of meeting these goals.

During our research, we compared the personnel training requirements imposed by EPA under RCRA with those imposed by OSHA through their Hazardous Waste Operations and Emergency Response regulation. Based on this analysis and comments received on the "Notice of Data Availability," we discovered that there is really only one area of overlap. This overlap is emergency response training. A recent report from the General Accounting Office titled: "Worker Protection, Better Coordination Can Improve Safety and Hazardous Materials Facilities" independently reached the same conclusion about an overlap in these two sets of emergency response training requirements.

We propose changing the RCRA regulations to have facilities comply with the OSHA regulations for emergency response training, and to drop the current RCRA requirements. The OSHA requirements are more extensive than the current RCRA requirements, and should therefore replace the RCRA requirements.

We are also proposing eliminating the requirement that facilities include job titles and descriptions as part of their personnel records. Based on comments received from the "Notice of Data Availability," we believe that requiring job descriptions provide little value in protecting human health and the environment. Often these job descriptions bear little resemblance to the work the employees do, and they have little relationship to whether an employee is trained properly.

Finally, we are proposing to eliminate the regulatory requirement for a description of the training employees will receive. The facility inspections ensure adequate training—simply

documenting the employee(s) name(s) and date(s) of training is sufficient.

*E. We Propose To Further Eliminate and Streamline the Land Disposal Restrictions (LDR) Paperwork Requirements, Existing LDR Paperwork Requirements*

The Land Disposal Restrictions (LDR) are a major regulatory component of the RCRA program. In addition to establishing treatment standards for hazardous waste prior to land disposal, they require generators and TSDFs to determine if their waste needs to be treated before land disposal, submit demonstrations and petitions to EPA if applicable, and send notices and/or certifications with shipments to TSDFs.

Based on our review of the LDR paperwork requirements, as well as our conversations with the regulated community, states, and the public through a series of public forums, we have determined that a number of LDR requirements for waste determinations, notifications, and certifications could be eliminated without diminishing the protection of human health or the environment.

**Proposed Changes to LDR Paperwork Requirements**

*Change 1: We Propose To Drop the § 268.7(a)(1) Generator Waste Determination Requirement*

We propose to eliminate the need for generators to conduct the waste determination required by § 268.7(a)(1). Section 268.7(a)(1) requires a generator to determine if their hazardous waste must be treated prior to land disposal. This determination can be made either through testing or knowledge of the waste's properties and constituents. After consulting with staff with field experience, we concluded that a combination of several other requirements provide the same safeguards as the § 268.7(a)(1) requirement.

First, a determination of whether a waste is hazardous is required by § 262.11 (which says that generators of solid waste must determine whether a waste is hazardous). This means a generator must know what properties and constituents are present in his waste—for example, does it contain toxic constituents that cause it to exhibit the Toxicity Characteristic described in § 261.24? Some of this same information is used in the determination as to whether the waste must be treated to comply with the LDRs.

Second, § 264.13(a)(1) requires TSDFs to perform a general waste analysis to determine “all of the information which

must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter” (emphasis added). Therefore, the owner or operator of a TSDF is already required to work with the waste generator to ensure that adequate information is available to comply with LDRs.

Third, in § 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of EPA hazardous waste code, waste constituents, wastewater and nonwastewater classification, and treatability group).

These other determinations are sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs. Therefore, we conclude that the § 268.7(a)(1) determination is duplicative, and we propose to eliminate it.

*Change 2: We Propose To Modify the § 268.7(b)(6) Recycler Notification and Certification Requirements*

Currently, treatment facilities must test their waste to determine whether it complies with LDR treatment standards. A one-time notice containing this information must be sent to the disposal facility. The treatment facility must also send a one-time notice to regulatory authorities that the treatment technology was operated properly. We originally thought that the regulating agency would review these reports to monitor what happens to this waste.

Based on a recent analysis of actual state and Regional facility oversight of treatment and recycling facilities, we have found that this information is not routinely used for its intended purpose. Our informants suggested that it would be sufficient for this information to be available in the facility's files if any question arises as to whether adequate treatment occurred.

Therefore, we are proposing that treatment and recycling facilities no longer send these notifications and certifications to EPA, as long as the information contained in them is kept in facility records.

*Change 3: We Propose To Modify the § 268.7(d) Hazardous Debris Notification Requirement*

Currently, generators or treatment facilities who claim that their hazardous debris is excluded from the definition of hazardous waste must send a one-time notice of this claim to EPA, and keep a copy of the notice in their files. We established this requirement on the assumption that regulatory agencies would review the notices to make themselves aware that this treated

debris was being sent to a non-hazardous waste landfill.

We have been unable to verify that this information is routinely used for its intended purpose. Therefore, we are proposing that generators and treaters of excluded debris not send these notifications to EPA, as long as the information that would have been in the notifications is kept in facility records.

*Change 4: We Propose To Modify the § 268.9(a) Characteristic Waste Determination Requirement*

We propose to eliminate the need for a separate LDR waste determination for characteristic waste. As with the § 268.7(a)(1) generator determinations above, the § 268.9(a) determinations are duplicated elsewhere. Generators are already required to determine whether they have a hazardous waste under § 262.11, and treaters are required to obtain a detailed chemical and physical analysis under § 264.13. Under § 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of the EPA hazardous characteristic waste code, underlying hazardous constituents, wastewater/nonwastewater classification, and treatability group).

These other determinations are sufficient to assure a waste is properly characterized for achieving compliance with the LDRs and, therefore, protecting human health and the environment.

*Change 5: We Propose To Modify the § 268.9(d) Notification Requirement*

Under § 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification about this must be placed in the generator's or treater's files, and also sent to EPA. We continue to see value in parties knowing that they are receiving wastes that are still subject to land disposal restrictions, even though they no longer exhibit a characteristic.

These records do not need to be sent to EPA, however, if they are kept on site in the facility's files. We have not been able to verify that this information, once sent to EPA, is routinely used. Therefore, we conclude based on the absence of such information from regulatory agencies, that its submission is not critical to overall protection of human health and the environment. And in the event of a question of compliance or enforcement action, it will be available in a facility's files.

### III. Other Burden Reduction Proposals

#### *Boiler and Industrial Furnace Records To Be Kept 3 Years*

Owner/operators of Boilers and Industrial Furnaces must conduct tests, such as performance tests for their continuous emissions monitors, and report the results to us. We propose to standardize the retention period for all records required to be kept by the Boilers and Industrial Furnaces to three years, bringing it in line with other RCRA recordkeeping retention periods. See 40 CFR 266.102 for the Boiler and Industrial Furnace regulations.

#### *Certified Hazardous Materials Managers*

Owners/operators of hazardous waste facilities must certify that their treatment, storage, and disposal units are functioning properly. For example, tank systems for storing or treating hazardous waste must be certified by an independent, qualified, registered professional engineer that the tanks meet thickness and strength requirements.

We propose to modify most of the RCRA certification requirements to allow a person who is a "Certified Hazardous Materials Manager" to make the certification. The Certified Hazardous Materials Manager Certification is accredited by the Council on Engineering and Scientific Specialties Board, which also accredits certified industrial hygienists, and certified safety professionals. The Certified Hazardous Materials Manager must have a combination of education and hands-on work experience at a hazardous waste facility, pass a closed book examination, continue their professional education, and follow a code of ethics.

The Agency was not aware of this discipline when most of the regulations were written that require engineers to do certifications. Most certification duties that an independent, qualified, registered professional engineer must perform can be carried out by a Certified Hazardous Materials Manager.

#### *General Facility Standards Are Streamlined and Updated*

When EPA originally developed the operating record requirements, we thought that records should routinely be kept for the life of the facility. Our reasoning was that in case an issue or problem came up about an earlier practice at a facility, the records would be available for examination.

After many years of experience with RCRA, we are better able to distinguish records that must be kept for the life of the facility from those which can be

discarded after some period of time without affecting protections of human health and the environment.

As discussed below, information about what wastes are disposed at a facility, where the disposed waste is located, and information relevant for facility closure must be kept for the life of the facility. More routine information, such as whether certain notices were filed and records of inspections, can be discarded after three years. In the RCRA regulations, we have generally settled on three years as a reasonable time frame for keeping records. This is consistent with other Agency programs, such as the Toxics Substance Control Act and the Toxic Chemical Release Reporting Community Right to Know programs, that impose a three year record retention time in their regulations.

We propose to modify a number of the §§ 264.73 and 265.73 operating record requirements to require only a three-year limit on keeping information. The following are proposed record retention times for each part of the operating record: § 264.73:

(b)(1) Description and quantity of each hazardous waste received and what was done with it: Maintain until closure of the facility.

(b)(2) The location of each hazardous waste: Maintain until closure of the facility.

(b)(3) Records and results of waste analyses and waste determinations: Maintain for three years after entry into the operating record.

(b)(4) Reports of implementation of contingency plan: Maintain for three years after entry into the operating record.

(b)(5) Records of inspections: Maintain for three years after entry into the operating record.

(b)(6) Monitoring, testing, and analytical data: Maintain until closure of the facility.

(b)(7) § 264.12(b) notices: Maintain for three years after entry into the operating record.

(b)(8) Closure estimates: Maintain in operating record until closure of the facility.

(b)(9) Waste minimization certification: Maintain for three years after entry into the operating record.

(b)(10) Records of quantities of waste placed in land disposal units under an extension to the effective date of any land disposal restriction: Maintain in operating record until closure of the facility.

(b)(11) For off-site treatment facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(12) For on-site treatment facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(13) For off-site land disposal facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(14) For on-site land disposal facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(15) For off-site storage facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(16) For on-site storage facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(17) Records required under § 264.1(j)(13): Maintain for three years after entry into the operating record.

We propose to similarly change the § 265.73 Operating Record requirements.

#### *Consolidation of Facility Contingency Plans Is Encouraged*

Owners and operators of hazardous waste facilities must have contingency plans in place to minimize hazards to human health and the environment from fires, explosions, or unplanned releases of hazardous waste. We received several comments on the "Notice of Data Availability" asking that we streamline or combine the various contingency plans required not only by EPA, but by other federal agencies too.

EPA already allows combined plans. In 1996, EPA in conjunction with the Department of Transportation, the Department of the Interior, and the Department of Labor issued the "Integrated Contingency Plan Guidance." This Guidance provides a mechanism for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. Owners and operators of hazardous waste facilities should consider developing one contingency plan based on this Guidance.

Facilities which adopt the "Integrated Contingency Plan" will minimize the duplication and costs associated with the preparation and use of multiple contingency plans. The use of a single plan per facility will also eliminate confusion for "first responders" (for example, firemen) who often must decide which of the contingency plans is applicable to a particular emergency. And, the adoption of a standard plan should ease the burden of coordination with local emergency planning committees.

The "Integrated Contingency Plan Guidance" can be found in the June 5, 1996 **Federal Register** (61 FR 28641–28664) or on the Internet at <http://www.epa.gov/swercepp/p-tech.htm>.

Today's proposals clarify our regulations (see 40 CFR 265.52) to say that combined plans are acceptable.

#### *We Propose To Streamline the Variance From Classification as a Solid Waste Procedure*

We have established provisions in our regulations to allow regulated entities to submit applications for variances, exclusions, petitions, and exceptions from certain RCRA requirements.

To simplify one of these applications, we propose to eliminate the requirement that a petitioner for a variance from classification as a solid waste survey the industry-wide prevalence of the material production process (the requirement is found in 40 CFR 260.31(b)). In practice, we have found that we do not use this information in making decisions on these variances. A variance petitioner can continue to submit such information if they choose, but it will no longer be an application requirement.

#### *We Propose To Eliminate the Requirement for Treatability Study Reports*

We also propose to eliminate the requirement that facilities submit in their annual report under § 261.4(f)(9) an estimate of the number of treatability studies and the amount of waste expected to be used in treatability studies in the upcoming year. Based on the observations of recipients (EPA and state regulators), we have determined that these reports do not contribute to the protection of human health and the environment. Moreover, these annual forecasts are not necessarily accurate, and we obtain the precise information anyway in the annual report that is submitted.

#### *We Propose To Streamline Groundwater Monitoring Requirements*

Hazardous waste treatment, storage, and disposal facilities must implement a groundwater monitoring system to detect the presence of contaminants in the groundwater. If contamination is detected, monitoring must be performed. If the level of contamination exceeds the groundwater protection standard, corrective action must be undertaken.

We propose to allow owners/operators of facilities to report on the effectiveness of corrective action on an annual basis instead of the current semi-annual basis. In combination with other

forms of oversight by regulatory agencies, annual reporting will provide adequate information to ensure compliance.

This proposed change makes sense because monitoring and cleaning up groundwater is almost always a multi-year or even multi-decade effort. Semi-annual reporting of data is not necessary for ensuring protection of human health and the environment.

We are also proposing to allow groundwater monitoring plans and reports to be kept at a facility.

And, we also propose to modify the § 264.99(g) requirement that facilities who are doing compliance monitoring conduct an annual Appendix IX analysis of all monitoring wells. Specifically, we propose allowing, on a case-by-case basis, sampling for a subset of the wells. Appendix IX analyses are costly at large facilities, and analyzing all wells does not necessarily contribute to protection of human health and the environment. This is especially the case if there are multiple units and wells at a facility, and only one unit shows signs of contamination.

Also, monitoring for constituents that are not likely to be found at a site is not a good use of resources and does not increase the protection of monitoring programs. Therefore, we propose allowing, on a case-by-case basis, sampling for a subset of the Appendix IX constituents. These decisions will be based on regulatory agencies' judgement of what supports the protection of human health and the environment, as well as on the contaminant situation at a site.

#### *Biennial Report Changes Are Being Implemented Separately*

We are not making changes to the Biennial Report through this effort. Reform of the Biennial Report has already been started in the 2001 Biennial Report cycle.

Changes made to the 2001 Biennial Report include streamlining the Biennial Report Source, Origin, Form, and Management codes; clarifying the types of waste to be reported; and removing some data elements. The 2001 Biennial Report forms and instructions are located on the Internet at: [www.epa.gov/epaoswer/hazwaste/data/brs01/forms.htm](http://www.epa.gov/epaoswer/hazwaste/data/brs01/forms.htm).

#### *Electronic Reporting and Recordkeeping Changes Are Being Handled Separately*

In the "Notice of Data Availability," we discussed allowing all RCRA-required documents to be kept and sent electronically. Since the publication of the "Notice," the Agency has begun to develop a separate rulemaking (the

"Cross-Media Electronic Reporting and Recordkeeping Rule") that will establish Agency-wide standards for electronic reporting and recordkeeping. We are deferring our efforts in this area to the "Cross-Media Electronic Reporting and Recordkeeping" rulemaking.

### **IV. How Would Today's Proposed Regulatory Changes Be Administered and Enforced in the States?**

#### *A. Applicability of Federal Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than

those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

#### *B. Authorization of States for Today's Proposal*

Today's proposal affects many aspects of the RCRA program and would be promulgated pursuant to both HSWA and non-HSWA statutory authority. Today's proposal would amend provisions in the RCRA regulations which were promulgated pursuant to HSWA. These provisions include, among others, the land disposal restrictions and the regulation of air emissions from hazardous waste facilities, which were promulgated pursuant to authority in sections 3004(m) and (o) respectively, of RCRA. Therefore, when promulgated, the Agency would add the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Other sections of today's proposal would be promulgated pursuant to non-HSWA authority.

The requirements in today's proposed rulemaking are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those States which are not authorized for the RCRA program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended.

This rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking would not become effective in authorized States until they adopted and are authorized for it, EPA will strongly encourage states to amend their programs and seek authorization for today's proposal, once it becomes final.

#### *C. Abbreviated Authorization Procedures*

EPA considers today's proposal to be a minor rulemaking and is proposing to add it to the list of minor or routine rulemakings in Table 1 to 40 CFR 271.21. Placement in this table would

enable states to use the abbreviated procedures located in 40 CFR 271.21(h) when they seek authorization for today's proposed changes after they are promulgated. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998). EPA requests comment on this placement in Table 1 to 40 CFR 271.21.

### **V. Administrative Requirements**

#### *A. Executive Order 12866*

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency 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, it has been determined that this rule is a "significant regulatory action" because the rule raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

#### *B. Environmental Justice Executive Order 12898*

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 Agency Report" and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental

quality for all residents of the United States. The Agency's 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 EPA's policies, programs, and activities.

EPA has considered the impacts of this proposed rulemaking on low-income populations and minority populations and concluded that any risks resulting from the rule would be very small. The basic reason for this finding is that the current features of the RCRA program that protect human health and the environment would be preserved or enhanced under the proposal. As mentioned earlier, the proposal would eliminate or modify paperwork requirements that have been deemed unnecessary because they add little to the protectiveness of the regulations. Most of the paperwork requirements entail notices and reports that are obscure, inconsequential or infrequently submitted. In addition, the proposal would give facilities added flexibility in how they can comply with the regulations. For example, the proposal would let facilities choose between hiring a certified hazardous materials manager or licensed professional engineer to perform specified activities (e.g., certifications). The proposal also would streamline certain requirements, such as contingency planning and personnel training, that are essential to a facility's protectiveness. Such flexibility and streamlining will make it easier for facilities to comply with the regulations.

Despite eliminating a number of paperwork requirements based on interviews and comments, we leave intact the basic environmentally protective activities that facilities are currently undertaking. That is, we would require facilities to continue performing their technical activities, but require them to submit less information to us on their daily activities. Note, however, that the proposal would not curtail the right of regulatory agencies to request any of the information we are proposing to eliminate. Facilities must continue to keep on-site records of their waste management activities and make them available to regulators when requested. As such, the rule would not limit regulators' or the public's ability to learn what is happening at a facility. In addition, basic information about a facility will still be readily accessible to the public via the Agency Web site and non-Agency Web sites such as the "Right to Know Network" Web site ([www.rtknet.org](http://www.rtknet.org)). However, we specifically request comment on

whether today's proposals in any way diminishes protection of human health and the environment.

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

Executive Order 13045: "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 proposed 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. The proposal would eliminate or modify paperwork requirements that have been deemed unnecessary because there is no evidence suggesting they contribute in a substantial way to the protectiveness of the regulations. In particular, we propose eliminating notices and reports that are redundant, inconsequential for compliance with technical requirements, or only rarely required to be sent in to regulatory authorities. Most of the reports we propose cutting or modifying are reports notifying the regulatory agency that some other regulatory requirement was performed. The proposal would leave intact the basic environmentally protective activities that facilities are currently undertaking.

*D. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public 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 EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

*E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*

The 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; (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 proposed 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 small entities subject to the rule. Today's proposal is specifically

intended to be deregulatory and to reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste program. For businesses in general, including all small businesses, the proposed changes would reduce the labor time and other costs of preparing, keeping records of, and submitting reports to the Agency. The proposed rule, for example, would reduce the frequency by which businesses must conduct specified recordkeeping and reporting activities. It also would eliminate certain recordkeeping and reporting requirements altogether, i.e., in cases where the documents are little used by the public or regulators. In addition, the rule would eliminate redundancies between the RCRA regulations and other regulatory programs (e.g., RCRA and OSHA requirements for personnel training), thereby streamlining facilities' compliance activities. Finally, the rule would provide increased flexibility in how waste handlers may comply with the regulations. For example, we would allow waste handlers to seek relief, on a case-by-case basis, from the inspection frequencies in the regulations. Facilities successfully demonstrating that the regulatory frequencies are not necessary (e.g., because of site-specific mitigating factors) would be granted a reduced inspection frequency by the Agency. We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities.

*F. 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" are 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 proposed 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. As explained above, today's proposal eliminates or relaxes many of the paperwork requirements in the regulations. Because these changes are equivalent to or less



stringent than the existing Federal program, States would not be required to adopt and seek authorization for them. Thus, Executive Order 13132 does not apply to this proposed rule.

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

#### G. *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 by State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules for which the Agency published a notice of proposed rulemaking if those rules contain "Federal mandates" that may result in the expenditure by State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

EPA has determined that this rule will not result in the expenditure of \$100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector in any one year because this is a burden reduction rulemaking which reduces costs.

#### H. *Executive Order 13175: Consultation and Coordination With Indian and Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the

relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed 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. As explained above, today's proposal eliminates or relaxes many of the paperwork requirements in the regulations. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### I. *Paperwork Reduction Act*

We have prepared a document listing the information collection requirements of this proposed rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

We calculate the reporting and recordkeeping burden reduction for this rule as 929,000 hours and \$120,000,000. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

#### J. *Executive Order 13211 (Energy Effects)*

This proposed 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 proposed rule is not likely to have any adverse energy effects.

#### List of Subjects

##### 40 CFR Part 260

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

##### 40 CFR Part 261

Comparable fuels, Syngas fuels, Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

##### 40 CFR Part 264

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

##### 40 CFR Part 265

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

##### 40 CFR Part 266

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

##### 40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

##### 40 CFR Part 270

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

##### 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 20, 2001.

**Christine Todd Whitman,**  
Administrator.

For the reasons set out in the preamble, it is proposed that title 40 of

the Code of Federal Regulations be amended as follows:

**PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

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

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

**Subpart C—Rulemaking Petitions**

**§ 260.31 [Amended]**

2. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

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

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

**Subpart A—General**

**§ 261.4 [Amended]**

4. Section 261.4 is amended by removing paragraphs (a)(9)(iii)(E) and (f)(9); and redesignating paragraphs (f)(10) and (f)(11) as (f)(9) and (f)(10).

5. Section 261.38 is amended by removing the last sentence of paragraph (c)(1) introductory text and removing and reserving paragraph (c)(1)(i).

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

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

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

**Subpart B—General Facility Standards**

7. Section 264.16 is amended by revising paragraphs (a)(1), (a)(3) and (d) to read as follows (the *Comment* following paragraph (a)(1) is unchanged):

**§ 264.16 Personnel training.**

(a)(1) 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.

(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:

(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and

(ii) Have been trained in all elements of the facility’s contingency plan applicable to their roles in emergency response.

\* \* \* \* \*

(d) The owner or operator must maintain at the facility records documenting the training or job experience required under paragraphs (a), (b), and (c) of this section that has been given to and completed by facility personnel.

\* \* \* \* \*

**Subpart D—Contingency Plan and Emergency Procedures**

8. Section 264.52 is amended by revising paragraph (b) to read as follows:

**§ 264.52 Content of contingency plan.**

\* \* \* \* \*

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator should consider developing one contingency plan based on the National Response Team’s Integrated Contingency Plan Guidance (“One Plan”) which meets all regulatory requirements.

\* \* \* \* \*

**§ 264.56 [Amended]**

9. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

**Subpart E—Manifest System, Recordkeeping, and Reporting**

10. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(6), (b)(8), and (b)(10) to read as follows (the *Comment* following paragraph (b)(2) is unchanged):

**§ 264.73 Operating record.**

\* \* \* \* \*

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years after it is entered into the operating record unless noted otherwise as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. All of this information must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

(6) Monitoring, testing, or analytical data, and corrective action data where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252 through 264.254, 264.276, 264.278, 264.280, 264.302 through 264.304, 264.309, 264.347, 264.602, 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, and 264.1082 through 264.1090. All of this information must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

(8) All closure cost estimates, and for disposal facilities, all post-closure cost estimates. This information must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, a petition pursuant to § 298.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. This information must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

11. Section 264.90 is amended by revising paragraph (a)(2) to read as follows:

**§ 264.90 Applicability.**

(a) \* \* \*

(2) All solid waste management units must comply with the requirements in § 264.101. A surface impoundment, waste pile, land treatment unit, or landfill must comply with the

requirements of §§ 264.91 through 264.100 in lieu of § 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial assurance responsibility requirements of § 264.101 apply to all regulated units.

\* \* \* \* \*

12. Section 264.98 is amended by revising paragraphs (c), (g)(5)(ii), (g)(6)(i), and (g)(6)(ii) to read as follows:

**§ 264.98 Detection monitoring program.**

\* \* \* \* \*

(c) The owner or operator must conduct and maintain records for a ground-water monitoring program for each chemical parameter and hazardous constituent specified in their permit. The Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents. The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h).

(g) \* \* \*

(5) \* \* \*

(ii) Note in the operating record whether this contamination was caused by a source other than the regulated unit or from an error in sampling, analysis, or evaluation;

\* \* \* \* \*

(6) \* \* \*

(i) Note in the operating record that statistically significant evidence of contamination was found;

(ii) Enter into the operating record a report demonstrating that a source other than a regulated unit caused the contamination, or that the contamination resulted from an error in sampling, analysis, or evaluation;

\* \* \* \* \*

13. Section 264.99 is amended:

a. Revising paragraph (g);

b. Removing and reserving paragraph (h)(1);

c. Removing paragraphs (i)(1) and (i)(2) and redesignating paragraphs (i)(3) and (i)(4) as (i)(1) and (i)(2).

The revision reads as follows:

**§ 264.99 Compliance monitoring program.**

\* \* \* \* \*

(g) The owner or operator must analyze samples from monitoring wells at the compliance point. The number of wells and samples will be worked out on a case-by-case basis with the Regional Administrator. The specific constituents from Appendix IX of part 264 to be analyzed will also be worked

out on a case-by-case basis with the Regional Administrator. This analysis must be done annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

\* \* \* \* \*

14. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

**§ 264.113 Closure; time allowed for closure.**

\* \* \* \* \*

(e) \* \* \*

(5) During the period of corrective action, the owner or operator shall provide an annual report to the Regional Administrator describing the progress of the corrective action. This report shall include all ground-water monitoring data, and an evaluation of the effect of the continued receipt of non-hazardous wastes on the corrective action.

\* \* \* \* \*

15. Section 264.120 is revised to read as follows:

**§ 264.120 Certification of completion of post-closure care.**

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care period was done in accordance with the specifications in the post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer or Certified Hazardous Materials Manager. Documentation supporting the certification must be furnished to the Regional Administrator upon request until he releases the owner or operator

from the financial assurance requirements for post-closure care under § 264.145(i).

**Subpart I—Use and Management of Containers**

16. Section 264.174 is revised to read as follows:

**§ 264.174 Inspections.**

At least weekly, or less frequently as determined by the Director, the owner or operator must inspect areas where containers are stored. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

**Subpart J—Tank Systems**

17. Section 264.191 is amended by revising paragraphs (a) and (b)(5)(ii) to read as follows (the **Note** following paragraph (b)(5)(ii) is unchanged):

**§ 264.191 Assessment of existing tank system's integrity.**

(a) For each existing tank system that does not have secondary containment, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep an assessment reviewed and certified by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager attesting to the tank system's integrity.

(b) \* \* \*

(5) \* \* \*

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include a leak test or other integrity examination that is certified by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager that addresses cracks, leaks, corrosion, or erosion.

\* \* \* \* \*

18. Section 264.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

**§ 264.192 Design and installation of new tank systems or components.**

(a) Owners or operators of new tank systems or components must obtain and submit to the Regional Administrator, at the time of submittal of part B

information, an assessment, reviewed and certified by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show 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. This assessment, which will be used by the Regional Administrator to approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified registered professional engineer or Certified Hazardous Materials Manager or independent, qualified installation inspector must inspect the system or component for the presence of any of the following items:

- 19. Section 264.193 is amended:
  - a. By revising paragraph (a);
  - b. By revising paragraphs (c)(3) and (c)(4); (the **Note** following paragraph (c)(4) is unchanged);
  - c. By revising paragraph (e)(3)(iii) (the **Note** following paragraph (e)(3)(iii) is unchanged);
  - d. By revising paragraph (g) introductory text and paragraph (g)(1);
  - e. By removing paragraph (h) and redesignating paragraph (i) as (h).
 The revisions read as follows:

**§ 264.193 Containment and detection of releases.**

- (a) Secondary containment must be provided for all existing and new tank systems and components.
- (c) \* \* \*
- (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, or at the earliest practicable time; and
- (4) Sloped or otherwise designed or operated to drain and remove liquids

resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

- (e) \* \* \*
- (3) \* \* \*
- (iii) Provided with a built-in, continuous leak-detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

(g) The owner or operator is not required to comply with the requirements of this section if he or she implements alternate design and operating practices and keeps records at the facility describing these practices. Such alternate design and operating practices, together with location characteristics, must prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment, during the active life of the tank system; or, in the event of a release that does migrate to ground or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not be exempted from the secondary containment requirements of this section.

- (1) The owner or operator who uses these alternate tank design and operating practices and who has a release must:
  - (i) Comply with the requirements of § 264.196 and
  - (ii) Decontaminate or remove contaminated soil to the extent necessary to:
    - (A) Enable the tank system to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and
    - (B) Prevent the migration of hazardous waste or hazardous constituents to ground or surface water.
  - (iii) If contaminated soil cannot be removed or decontaminated, the owner or operator must comply with the requirements of § 264.197(b).

20. Section 264.195 is amended by revising paragraph (b) to read as follows (the **Note** following paragraph (b) is unchanged):

**§ 264.195 Inspections.**

- (b) The owner or operator must inspect at least weekly, or less

frequently as determined by the Director. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

21. Section 264.196 is amended by removing paragraph (d); redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and revising newly designated paragraph (e) to read as follows:

**§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.**

(e) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (d) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer or Certified Hazardous Materials Manager that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

**Subpart K—Surface Impoundments**

22. Section 264.223 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as paragraphs (b)(1) through (b)(3), respectively; and revising paragraph (c) introductory text to read as follows:

**§ 264.223 Response actions.**

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

**Subpart L—Waste Piles**

23. Section 264.251 is amended by revising paragraph (c) introductory text to read as follows:

**§ 264.251 Design and operating requirements.**

(c) The owner or operator of each new waste pile, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners, and a leachate

collection and removal system above and between the liners.

\* \* \* \* \*

24. Section 264.253 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and revising paragraph (c) introductory text to read as follows:

**§ 264.253 Response actions.**

\* \* \* \* \*

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

\* \* \* \* \*

**Subpart M—Land Treatment**

**§ 264.278 [Amended]**

25. Section 264.278 is amended by removing and reserving paragraph (g)(1); removing paragraphs (h)(1) and (h)(2) and redesignating paragraphs (h)(3) and (h)(4) as (h)(1) and (h)(2).

**Subpart N—Landfills**

26. Section 264.304 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3); and revising paragraph (c) introductory text, to read as follows:

**§ 264.304 Response actions.**

\* \* \* \* \*

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

\* \* \* \* \*

27. Section 264.314 is amended by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e) and by revising newly designated paragraphs (a) and (e) introductory text to read as follows:

**§ 264.314 Special requirements for bulk and containerized liquids.**

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

\* \* \* \* \*

(e) The placement of any liquid that is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:

\* \* \* \* \*

**Subpart O—Incinerators**

**§ 264.343 [Amended]**

28. Section 264.343 is amended by removing the last sentence of paragraph (a)(2).

**Subpart W—Drip Pads**

29. Section 264.571 is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 264.571 Assessment of existing drip pad integrity.**

(a) For each existing drip pad, the owner or operator must determine whether it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). The owner or operator must obtain an assessment reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager. The assessment must be updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with the standards of § 264.573 are complete.

(b) The owner or operator must develop a plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b). This plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with the requirements of § 264.573. The plan must be completed no later than two years before the date that all repairs, upgrades, and modifications are complete. The plan must be reviewed and certified by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must develop as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager that the drip pad conforms to the drawings.

\* \* \* \* \*

30. Section 264.573 is amended by revising paragraphs (a)(4)(ii), (g), and (m)(1)(iii) and removing paragraphs (m)(1)(iv) and (m)(3) and removing and reserving paragraph (m)(2) to read as follows:

**§ 264.573 Design and operating requirements.**

(a) \* \* \*

(4) \* \* \*

(ii) The owner or operator must obtain and keep on file an assessment of the

drip pad reviewed and certified by an independent, qualified, registered professional engineer or Certified Hazardous Materials Manager attesting to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

\* \* \* \* \*

(g) The owner or operator must evaluate the drip pad to determine that it meets the requirements of paragraphs (a) through (f) of this section and must obtain a certification of this by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager and maintain this certification on-site.

\* \* \* \* \*

(m) \* \* \*

(1) \* \* \*

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs. Records that repairs were completed on schedule must be kept at the facility.

\* \* \* \* \*

31. Section 264.574 is amended by revising paragraph (a) to read as follows:

**§ 264.574 Inspections.**

(a) During construction or installation, liners and cover systems (for example, membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections. Immediately after construction or installation, liners must be inspected and certified to meet the requirements in § 264.573 by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

\* \* \* \* \*

**Subpart AA—Air Emission Standards for Process Vents**

**§ 264.1036 [Removed and Reserved]**

32. Remove and reserve § 264.1036.

**Subpart BB—Air Emission Standards for Equipment Leaks**

**§ 264.1062 [Amended]**

33. Section 264.1061 is amended by removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2),

respectively; and removing paragraph (d).

§ 264.1062 [Amended]

34. Section 264.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

§ 264.1065 [Removed and Reserved]

35. Remove and reserve § 264.1065.

Subpart DD—Containment Buildings

36. Section 264.1100 is amended by revising the introductory text to read as follows:

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

\* \* \* \* \*

37. Section 264.1101 is amended by revising paragraphs (c)(2), (c)(3)(i)(C) and (c)(4), removing paragraphs (c)(3)(i)(D) and (c)(3)(iii) and removing and reserving paragraph (c)(3)(ii) to read as follows:

§ 264.1101 Design and operating standards.

\* \* \* \* \*

(c) \* \* \*

(2) Obtain certification by an independent qualified registered professional engineer or Certified Hazardous Materials Manager that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

(3) \* \* \*

(i) \* \* \*

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary containment system, and establish a schedule for accomplishing the clean-up and repairs. Records that repairs were completed on schedule must be kept at the facility.

(ii) [Reserved]

(4) Inspect and record in the facility's operating record at least once every seven days, or less frequently as determined by the Director, data gathered from monitoring 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. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an

evaluation of the compliance record of a facility.

\* \* \* \* \*

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

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

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart B—General Facility Standards

39. Section 265.1 is amended by revising paragraph (b) to read as follows (the Comment following paragraph (b) is unchanged):

§ 265.1 Purpose, scope, and applicability.

\* \* \* \* \*

(b) Except as provided in § 265.1080(b), the standards of this part, §§ 264.552, 264.553, and 264.554 of this chapter apply to owners and operators of facilities that treat, store, or dispose of hazardous waste and who have complied with the requirements for interim status under RCRA section 3005(e) and § 270.10 of this chapter.

\* \* \*

40. Section 265.16 is amended by revising paragraphs (a)(1) and (a)(3) and (d) to read as follows:

§ 265.16 Personnel training.

(a)(1) 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.

\* \* \* \* \*

(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:

(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and

(ii) Have been trained in all elements of the facility's contingency plan applicable to their roles in emergency response.

\* \* \* \* \*

(d) The owner or operator must maintain at the facility records documenting the training or job experience required under paragraphs (a), (b), and (c) of this section that has been given to and completed by facility personnel.

\* \* \* \* \*

Subpart D—Contingency Plans and Emergency Procedures

41. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

\* \* \* \* \*

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator should consider developing one contingency plan based on the National Response Team's Integrated Contingency Plan Guidance (One Plan) which meets all regulatory requirements.

\* \* \* \* \*

42. Section 265.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i)

43. Section 265.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(6), (b)(8), and (b)(10) to read as follows (the Comment following paragraph (b)(6) is unchanged):

§ 265.73 Operating record.

\* \* \* \* \*

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years after it is entered into the operating record unless noted otherwise as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be kept in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. All of this information must be maintained in the operating record until closure of the facility;

\* \* \* \* \*

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by

§§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.223, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this part. All of this information must be maintained in the operating record until closure of the facility;

\* \* \* \* \*

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, monitoring data required pursuant to a petition under § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. All of this information must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8 of this chapter. All of this information must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

**Subpart F—Groundwater Monitoring**

44. Section 265.90 is amended by revising paragraph (d)(1) and (d)(3) to read as follows:

**§ 265.90 Applicability.**

\* \* \* \* \*

(d) \* \* \*

(1) Within one year after [the effective date of the final rule], develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system;

\* \* \* \* \*

(3) Prepare a report in accordance with § 265.93(d)(4);

\* \* \* \* \*

45. Section 265.93 is amended:  
 a. By revising paragraph (c)(1);  
 b. Redesignating paragraph (d)(1) as paragraph (d) introductory text, and redesignating paragraphs (d)(2) through (d)(7) as (d)(1) through (d)(6), respectively;

c. Revising newly designated paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (d)(3) introductory text, (d)(4), (d)(5), (d)(6), and paragraph (e) and (f).

The revisions read as follows:

**§ 265.93 Preparation, evaluation and response.**

\* \* \* \* \*

(c)(1) If the comparisons for the upgradient wells made under paragraph (b) of this section show a significant increase (or pH decrease), the owner or operator must note this in the operating record.

\* \* \* \* \*

(d) If the analyses performed under paragraph (c)(2) of this section confirm a significant increase (or pH decrease), the owner or operator must:

(1) Develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment program at the facility.

(2) The plan to be developed under § 265.90(d)(1) or paragraph (d)(1) of this section must specify:

\* \* \* \* \*

(3) The owner or operator must implement the ground-water quality assessment program which satisfies the requirements of paragraph (d)(2) of this section, and, at a minimum, determine:

\* \* \* \* \*

(4) The owner or operator must make his first determination under paragraph (d)(3) of this section as soon as technically feasible, and prepare a report containing an assessment of the ground-water quality. This report must be kept in the facility operating record.

(5) If the owner or operator determines, based on the results of the first determination under paragraph (d)(3) of this section, that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he may reinstate the indicator evaluation program described in § 265.92 and paragraph (b) of this section.

(6) If the owner or operator determines, based on the first determination under paragraph (d)(3) of this section, that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he:

(i) Must continue to make the determinations required under paragraph (d)(3) of this section on a quarterly basis until final closure of the facility, if the ground-water quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under paragraph (d)(3) of this section, if the ground-water quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of this subpart, any ground-water quality assessment to satisfy the requirements of paragraph (d)(3) of this section which is initiated prior to final closure of the facility must be completed in accordance with paragraph (d)(4) of this section.

(f) Unless the ground water is monitored to satisfy the requirements of paragraph (d)(3) of this section, at least annually the owner or operator must evaluate the data on ground-water surface elevations obtained under § 265.92(e) to determine whether the requirements under § 265.91(a) for locating the monitoring wells continue to be satisfied. If the evaluation shows that § 265.91(a) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

46. Section 265.94 is amended by revising the section heading and paragraphs (a) introductory text, (a)(2), and (b), to read as follows:

**§ 265.94 Recordkeeping requirements.**

(a) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(3), the owner or operator must:

\* \* \* \* \*

(2) Keep records of the following:

(i) During the first year when initial background concentrations are being established for the facility:

concentrations or values of the parameters listed in § 265.92(b)(1) for each ground-water monitoring well.

(ii) Concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these parameters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1).

(iii) Results of the evaluations of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

(b) If the ground water is monitored to satisfy the requirements of § 265.93(d)(3), the owner or operator must keep records of the following:

(1) Analyses and evaluations specified in the plan, which satisfies the

requirements of § 265.93(d)(2), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Results of his or her ground-water quality assessment program, which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water.

**Subpart G—Closure and Post-Closure**

47. Section 265.113 is amended by revising paragraph (e)(5) to read as follows:

**§ 265.113 Closure; time allowed for closure.**

\* \* \* \* \*

(e) \* \* \*

(5) The owner or operator must provide annual reports to the Regional Administrator describing the progress of the corrective action program. These reports must include ground-water monitoring data and an analysis of the effect of continued receipt of non-hazardous waste on the effectiveness of the corrective action.

\* \* \* \* \*

48. Section 265.120 is revised as follows:

**§ 265.120 Certification of completion of post-closure care.**

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager. Documentation supporting the certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

**Subpart I—Use and Management of Containers**

49. Section 265.174 is revised to read as follows:

**§ 265.174 Inspections.**

At least weekly, or less frequently as determined by the Director, the owner or operator must inspect areas where

containers are stored. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

**Subpart J—Tank Systems**

50. Section 265.191 is amended by revising paragraphs (a) and (b)(5)(ii) to read as follows (the **Note** following paragraph (b)(5)(ii) is unchanged):

**§ 265.191 Assessment of existing tank system's integrity.**

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep an assessment reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting to the tank system's integrity.

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described in paragraph (b)(5)(i) of this section, or an internal inspection and/or other tank integrity examination certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that addresses cracks, leaks, corrosion, and erosion.

\* \* \* \* \*

51. Section 265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

**§ 265.192 Design and installation of new tank systems or components.**

(a) Owners or operators of new tank systems or components 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 so that it will not collapse, rupture, or fail. The owner or operator must obtain an assessment by an independent, qualified registered

professional engineer or Certified Hazardous Materials Manager attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

\* \* \* \* \*

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified registered professional engineer or Certified Hazardous Materials Manager or independent, qualified installation inspector must inspect the system or component for the presence of any of the following items:

\* \* \* \* \*

52. Section 265.193 is amended:

- a. By revising paragraphs (a);
  - b. By revising paragraph (e)(3)(iii) (the **Note** following paragraph (e)(3)(iii) is unchanged);
  - c. By revising paragraphs (g) introductory text and (g)(1);
  - d. Removing paragraph (h);
  - e. Redesignating paragraph (i) as (h).
- The revisions read as follows:

**§ 265.193 Containment and detection of releases.**

(a) Secondary containment must be provided for all existing and new tank systems and components.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(iii) Provided with a built-in, continuous leak-detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

\* \* \* \* \*

(g) The owner or operator is not required to comply with the requirements of this section if he or she implements alternate design and operating practices and keeps records at the facility describing these practices. Such alternate design and operating practices, together with location characteristics, must prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment, during the active life of the tank system; or, in the event of a release that does migrate to ground or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not be exempted from the



secondary containment requirements of this section.

(1) The owner or operator who uses these alternate tank design and operating practices and who has a release must:

(i) Comply with the requirements of § 264.196 of this chapter and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground or surface water.

(iii) If contaminated soil cannot be removed or decontaminated, the owner or operator must comply with the requirements of § 264.197(b) of this chapter.

\* \* \* \* \*

53. Section 265.195 is amended by revising paragraph (a) to read as follows (the **Note** following paragraph (a) is unchanged):

**§ 265.195 Inspections.**

(a) The owner or operator must inspect at least weekly, or less frequently as determined by the Director. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

\* \* \* \* \*

54. Section 265.196 is amended by removing paragraph (d); redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and revising newly designated paragraph (e), to read as follows (the **Note** following newly designated paragraph (e) is unchanged):

**§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.**

\* \* \* \* \*

(e) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (d) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer or Certified Hazardous Materials Manager that the repaired system is capable of handling hazardous

wastes without release for the intended life of the system.

\* \* \* \* \*

**Subpart K—Surface Impoundments**

55. Section 265.221 is amended by revising paragraph (a) to read as follows:

**§ 265.221 Design and operating requirements.**

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of a surface impoundment unit must have two or more liners, and a leachate collection and removal system between the liners. The leachate collection and removal system must be operated in accordance with § 264.221(c) of this chapter, unless exempted under § 264.221(d), (e), or (f) of this chapter.

\* \* \* \* \*

56. The second section designated as § 265.223 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as paragraphs (b)(1) through (b)(3), respectively;

c. Revising paragraph (c) introductory text.

The revisions read as follows:

**§ 265.223 Response actions.**

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must develop a response action plan. \* \* \*

\* \* \* \* \*

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

\* \* \* \* \*

**Subpart L—Waste Piles**

57. Section 265.259 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and

c. Revising paragraph (c) introductory text.

The revisions read as follows:

**§ 265.259 Response actions.**

(a) The owner or operator of waste pile units subject to § 265.254 must develop a response action plan. \* \* \*

\* \* \* \* \*

(c) To make the leak and/or remediation determinations in

paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

\* \* \* \* \*

**Subpart M—Land Treatment**

**§ 265.276 [Amended]**

58. Section 265.276 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

**Subpart N—Landfills**

59. Section 265.301 is amended by revising paragraph (a) to read as follows:

**§ 265.301 Design and operating requirements.**

(a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between the liners. The leachate collection and removal system must be operated in accordance with § 264.301(d), (e), or (f) of this chapter.

\* \* \* \* \*

60. Section 265.303 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and

c. Revising paragraph (c) introductory text.

The revisions read as follows:

**§ 265.303 Response actions.**

(a) The owner or operator of landfill units subject to § 265.301(a) must develop a response action plan. \* \* \*

\* \* \* \* \*

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

\* \* \* \* \*

61. Section 265.314 is amended by removing paragraphs (a), redesignating paragraphs (b) through (g) as paragraphs (a) through (f), and revising newly designated paragraphs (a) and (f) introductory text to read as follows:

**§ 265.314 Special requirements for bulk and containerized liquids.**

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

\* \* \* \* \*

(f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator

of the landfill demonstrates to the Regional Administrator or the Regional Administrator determines that:

Subpart W—Drip Pads

62. Section 265.441 is amended by revising paragraph (a), (b), and (c) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

(a) For each existing drip pad, the owner or operator must determine whether it meets the requirements of this subpart, except for the requirements for liners and leak detection systems of § 265.443(b). The owner or operator must obtain and keep an assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 265.443 are complete.

(b) The owner or operator must develop a plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b), and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with the requirements of § 265.443. The plan must be reviewed and certified by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Regional Administrator or State Director the as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager attesting that the drip pad conforms to the drawings.

63. Section 265.443 is amended by revising paragraphs (a)(4)(ii) and (g) and removing paragraph (m)(1)(iv), removing and reserving paragraph (m)(2), and removing paragraph (m)(3) to read as follows:

§ 265.443 Design and operating requirements.

(a) \* \* \*

(4) \* \* \*

(ii) The owner or operator must obtain and keep an assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and a certification of this by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager must be obtained and kept on-site.

64. Section 265.444 is amended by revising paragraph (a) to read as follows:

§ 265.444 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections. Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

Subpart BB—Air Emission Standards for Equipment Leaks

§ 265.1061 [Amended]

65. Section 265.1061 is amended by removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2), respectively; and removing paragraph (d).

66. Section 265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

67. Section 265.1100 is amended by revising the introductory text to read as follows:

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

68. Section 265.1101 is amended by removing paragraphs (c)(3)(i)(D), and (c)(3)(iii) and removing and reserving paragraph (c)(3)(ii); and revising paragraphs (c)(2), (c)(3)(i)(C), and (c)(4) to read as follows:

§ 265.1101 Design and operating standards.

(c) \* \* \*

(2) Obtain and keep a certification by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that the containment building design meets the requirements of paragraphs (a) through (c) of this section.

(3) \* \* \*  
(i) \* \* \*

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary containment system, and establish a schedule for accomplishing the clean-up and repairs. Records that repairs were completed on schedule must be kept at the facility.

(ii) [Reserved]

(4) Inspect and record in the facility's operating record at least once every seven days, or less frequently as determined by the Director data gathered from monitoring 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. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

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

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

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

**Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces**

70. Section 266.102 is amended by revising paragraph (e)(10) to read as follows:

**§ 266.102 Permit standards for burners.**

\* \* \* \* \*

(e) \* \* \*

(10) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for three years.

\* \* \* \* \*

71. Section 266.103 is amended by revising paragraphs (b)(2)(ii)(D), (d), and (k) to read as follows:

**§ 266.103 Interim status standards for burners.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(D) When best engineering judgment is used to develop or evaluate data and make determinations, it must be done by an independent qualified, registered professional engineer or Certified Hazardous Materials Manager, and a certification of his or her determinations must be provided in the certification of precompliance.

\* \* \* \* \*

(d) *Periodic recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

\* \* \* \* \*

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for three years.

\* \* \* \* \*

72. Section 266.111 is amended by revising paragraph (e)(2)(i) to read as follows:

**§ 266.111 Standards for direct transfer.**

\* \* \* \* \*

(e) \* \* \*

(2) *Requirements prior to meeting secondary containment requirements.* (i) For existing direct transfer equipment that does not have secondary containment, the owner or operator shall determine whether the equipment is leaking or is unfit for use. The owner

or operator shall obtain and keep on file at the facility a certified assessment from a qualified, registered professional engineer or Certified Hazardous Materials Manager that attests to the equipment's integrity.

\* \* \* \* \*

**Subpart M—Military Munitions**

73. Section 266.205 is amended by revising paragraph (a)(1)(v) to read as follows:

**§ 266.205 Standards applicable to the storage of solid waste military munitions.**

(a) \* \* \*

(1) \* \* \*

(v) The owner or operator must provide notice to the Director within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of this section.

\* \* \* \* \*

**PART 268—LAND DISPOSAL RESTRICTIONS**

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

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

75. Section 268.7 is amended by revising paragraphs (b)(6) and (d)(1); removing paragraphs (a)(1) and (a)(6); and redesignating paragraphs (a)(2) through (a)(5) as (a)(1) through (a)(4) and (a)(7) through (a)(10) as (a)(5) through (a)(8):

**§ 268.7 Testing, tracking and recordkeeping requirements for generators, treaters, and disposal facilities.**

\* \* \* \* \*

(b) \* \* \*

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of 40 CFR 266.20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each

entity receiving the hazardous waste-derived product.

\* \* \* \* \*

(d) \* \* \*

(1) A one-time notification, including the following information, must be prepared and placed in the facility's on site files.

\* \* \* \* \*

76. Section 268.9 is amended by revising paragraphs (a) and (d) introductory text to read as follows:

**§ 268.9 Special rules regarding wastes that exhibit a characteristic.**

(a) A generator of hazardous waste must determine, following the requirements of § 262.11 of this chapter, or if applicable, § 264.13 of this chapter, and including the ability to use knowledge of the waste, if the waste has to be treated before it can be land disposed.

(1) This is done by determining if the hazardous waste meets the treatment standards in §§ 268.40, 268.48, and 268.49. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed. These methods of treatment are specified in § 268.40, and are described in detail in § 268.42, Table 1. Wastes with required treatment methods do not need to meet concentration levels.

(2) For purposes of this part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part 261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section.

(3) If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewater treated by CMBST, RORGS, or POLYM of § 268.42, Table 1), the generator must meet treatment standards for all underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

\* \* \* \* \*

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generators or treaters files. The notification and certification must be updated if the process or operation generating the waste changes and/or if

the subtitle D facility receiving the waste changes.

\* \* \* \* \*

**PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

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

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

78. Section 270.16 is amended by revising paragraph (a) to read as follows:

**§ 270.16 Specific part B information requirements for tank systems.**

\* \* \* \* \*

(a) An assessment by an independent, registered professional engineer or a

Certified Hazardous Materials Manager of the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192 of this chapter.

\* \* \* \* \*

79. Section 270.17 is amended by revising paragraph (d) to read as follows:

**§ 270.17 Specific part B information requirements for surface impoundments.**

\* \* \* \* \*

(d) A certification by a qualified engineer or Certified Hazardous Materials Manager of the structural integrity of each dike. For new units, the owner or operator must submit a statement by a qualified engineer or a Certified Hazardous Materials Manager that construction will be completed in

accordance with the plans and specifications.

\* \* \* \* \*

**PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS**

80. The authority citation for part 271 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a) and 6926.

81. Section 271.1 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

**§ 271.1 Purpose and scope.**

\* \* \* \* \*

(j) \* \* \*

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * *	* * * * *	* * * * *	* * * * *
[Date of publication of final rule in the Federal Register (FR)].	Office of Solid Waste Burden Reduction Project.	[FR page numbers] .....	[Date of X months from date of publication of final rule].
* * * * *	* * * * *	* * * * *	* * * * *

82. Section 271.21 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

**§ 271.21 Procedures for revision of State programs.**

\* \* \* \* \*

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
* * * * *	* * * * *	* * * * *
* * * * *	* * * * *	* * * * *
Resource Conservation and Recovery Act Burden Reduction Initiative	* * * * *	* * * * *