ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 1675-1]

Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendment to rule with request for comments.

SUMMARY: This regulation amends the hazardous waste regulations (40 CFR § 261.4(b)) to exclude from regulation under Subtitle C of the Resource Conservation and Recovery Act (1) solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore and (2) cement kiln dust wastes. This action is being taken to bring the regulation into conformance with Section 7 of the recently enacted Solid Waste Disposal Act Amendments of 1980. The Agency, for the time being, is interpreting the scope of these exclusions broadly but is unsure that this interpretation is consistent with the intent of the Congress. Therefore, over the next 90 days, it intends to carefully examine the legislative history of the statutory amendment and consider the public comments being solicited by this action. Based on this review, the Agency, in subsequent rulemaking action, may further narrow the exclusion being promulgated today.

DATE: Effective Date: November 19, 1980.

Comment Date: This amendment is promulgated as an interim final rule. The Agency will accept comments on it until January 19, 1981.

ADDRESSES: Comments on the amendment should be sent to Docket Clerk (Docket No. 3001), Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact Alfred W. Lindsey, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9185. For information on implementation, contact:

Region I, Dennis Huebner, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5

Region III, Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980

Region IV, James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 881-3016

Region V, Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 787-2645

Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII, Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX, Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606

Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1260

SUPPLEMENTARY INFORMATION:

I. Reason and Basis for Today's Amendments

On May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA). See 45 FR 33066-33588. These regulations define solid wastes and hazardous wastes and establish requirements applicable to generators, transporters, treaters, storers and disposers of hazardous wastes. These regulations also require owners and operators of hazardous waste treatment, storage and disposal facilities to obtain RCRA permits.

The definition of solid waste is provided in § 261.2 of these regulations. The definition of hazardous waste is provided in § 261.3 of these regulations. Both definitions are sufficiently broad to include many solid wastes generated in the extraction, beneficiation and processing of ores and minerals, exclusive of mining overburden returned to the mine site (see § 261.4(b)(3).) Specifically, eight mining and mineral processing wastes (EPA hazardous waste Nos. FO13-FO15 and KO64-KO68) were listed as hazardous wastes in §§ 261.31 and 261.32 of the May 19 regulations (see 45 FR 33123-33124). In addition, other mining and mineral processing wastes may be hazardous wastes because they exhibit one or more of the characteristics of hazardous wastes in Subpart C of Part 261. By virtue of these definitions, a number of mining and mineral processing wastes will be subject to the regulations on November 19, 1980, the effective date of the regulations.

Additionally, some cement kiln dust waste could be hazardous waste under the regulations, if it exhibits any of the characteristics of hazardous waste in Subpart C of Part 261. Thus, some cement kiln dust waste may be subject to the regulations on and after November 19, 1980.

In Section 7 of the recently enacted Solid Waste Disposal Act Amendments of 1980 (P.L. 94-482, October 21, 1980), the Congress amended Section 3001 of RCRA to prohibit EPA from regulating certain wastes under Subtitle C of RCRA until after completion of certain studies and certain rulemaking. Among these wastes are (1) "solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore" and (2) "cement kiln dust waste." Accordingly EPA is today amending its regulations, at § 261.4, to incorporate this statutory change.

Several trade associations, representing the mining and cement industries, have asked EPA to amend its regulations by November 19, 1980, the effective date of these regulations, to incorporate the 1980 amendments concerning these wastes. In addition these associations have sought a clarification of the scope of the exclusion, particularly regarding the types of mining operations that are excluded. The statutory exclusion of mining wastes in Section 3001(b)(3) is limited to "solid waste from the extraction, beneficiation and processing of ores and minerals." One mining trade association has argued that this exclusion covers wastes from the exploration, mining, milling, smelting and refining of ores and minerals (including coal.)

In the interest of providing the mining and cement industries clear guidance on whether they are subject to the regulations, EPA is amending the regulations before the November 19 date. At the same time EPA questions whether the Section 3001(b)(3) was to be interpreted as broadly as the trade associations suggest. To resolve these questions, the Agency will have to examine carefully the legislative history and consult with the mining and cement industries and the public. The Agency could not accompish this by November 19, 1980, given the extremely large workload with which it is burdened in developing the Phase II regulations, in responding to other requests for regulatory amendments and interpretations, and in responding to petitions for judicial review of the regulations.

Consequently, the Agency has decided to provide an immediate but temporary accommodation of the requests on this matter by promulgating today interim final amendments to § 261.4(b) which provide the requested exclusion using the language of the statutory amendments. Until the Agency takes further rulemaking action on this matter, it will interpret the language of today's amendments, with respect to the mining and mineral processing waste exclusion, to include solid waste from the exploration, mining, milling, smelting and refining of ores and minerals.

This exclusion does not, however, apply to solid wastes, such as spent solvents, pesticide wastes, and discarded commercial chemical products, that are not uniquely associated with these mining and allied processing operations, or cement kiln operations. Therefore, should either industry generate any of these non-indigenous wastes and the waste is identified or listed as hazardous under Part 261 of the regulations, the waste is hazardous and must be managed in conformance with the Subtitle C regulations.

II. Intended Reconsideration of Today's Amendments

The Agency fully intends to consider the appropriate scope of the statutory exclusion and may well take rulemaking action to lessen the scope of the exclusion being promulgated today. To aid in this consideration, the Agency is soliciting public comments on this matter. In particular EPA questions whether Congress intended to exclude (1) wastes generated in the smelting, refining and other processing of ores and minerals that are further removed from the mining and beneficiation of such ores and minerals, (2) wastes generated during exploration for mineral deposits and (3) wastewater treatment and air emission control sludges generated by the mining and mineral processing industry. EPA specifically seeks comment on whether such wastes should be part of the exclusion. EPA also seeks comment on how it might distinguish between excluded and non-excluded solid wastes.

If EPA narrows the scope of the exclusion being promulgated today in future rulemaking, those who generate, transport, store, treat or dispose of wastes affected by such a change will have six months to prepare for compliance with the regulations. This six month delay in the effective date is provided under authority of Section 3010(b) of RCRA.

In addition to the consideration of the scope of the exclusion discussed above, the Agency will be considering regulatory amendments to implement other provisions of Section 3001(b)(3). Section 3001(b)(3)(B) recognizes EPA authority to issue regulations under Section 2002 of RCRA to place requirements on owners and operators of disposal sites for excluded wastes. These requirements concern identification and recording of information on the location of disposal sites as well as on the composition of the wastes that are disposed. EPA also invites public comment on how it should formulate such requirements.

III. Effect of Today's Amendments

Today's amendments relieve persons who generate or manage hazardous wastes produced in, and unique to, the exploration, mining, milling, smelting or refining of ores or minerals and persons who generate or manage a cement kiln dust waste from having to comply with EPA's regulations under Subtitle C of RCRA with respect to these wastes. Owners and operators of existing treatment, storage and disposal facilities do not have to submit a Part A, RCRA permit application by November 19, 1980, or comply with the interim status standards of Part 265 after November 19, 1980, with respect to such wastes. Also, owners and operators of new facilities for the treatment, storage or disposal of the subject wastes will not have to apply for and obtain a RCRA permit before constructing or operating such facilities.

Today's action does not relieve persons who generate or manage those wastes herein discussed from compliance with other Federal and State regulations including State regulations designed to implement Subtitle D of RCRA and State regulations being implemented in lieu of the Federal Subtitle C regulations where the State has interim or full authorization under Section 3006 of RCRA.

IV. Relationship to Final Listing of Certain Hazardous Waste in §§ 261.31 and 261.32

On November 12, 1980, in a separate rulemaking action (see 45 FR 74884), the Agency has finalized the list of most of the hazardous wastes listed in §§ 261.31 and 261.32. Included in this action was finalization of seven of the mining and mineral processing wastes mentioned above (EPA hazardous waste nos. F014–15 and K064–68). One of the wastes previously mentioned (F013) was deleted from the list of hazardous waste (§ 261.31) in that separate action. Because of the Agency's uncertainty with respect to the scope of the statutory amendments, as discussed above, it has gone ahead with the finalization of the aforementioned listed wastes. Notwithstanding, the effect of today's action is to suspend those final listings of hazardous wastes, unless and until the Agency reduces the scope of today's exclusion in subsequent rulemaking action.

V. Coal Mining Waste

The Solid Waste Disposal Act Amendments of 1980 also included special provisions (Sections 1006(c) and 3005(f)) designed to coordinate regulation of coal mining waste with the requirements of the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.* EPA believes that these provisions present problems of legal interpretation which cannot be resolved by November 19, 1980. The Agency may seek public comment on its interpretation of those provisions in later rulemaking actions. This interim final rule does not attempt to interpret the scope of Sections 1006(c) and 3005(f). However, since coal is arguably a "mineral or ore" under Section 3001(b)(3), wastes from the extraction, beneficiation and processing of coal are excluded from RCRA Subtitle C regulation in today's amendment to § 261.4(b). Until EPA has had an opportunity to analyze the intended scope of the exclusion, the terms "extraction, beneficiation and processing" will be interpreted broadly to include coal exploration, mining, cleaning, classification, and other processing activities. As with other elements of this exclusion, EPA will be examining this exclusion, particularly the exclusions for classification, and other processing activities, in more detail later and may decide to narrow its scope.

VI. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. The amendments promulgated today, however, serve to put in regulatory form what is already stated in statute. To establish a deferred effective date would only serve to confuse the regulated community. Consequently, the Agency is establishing an immediate effective date for this amendment.

VII. Request for Comments

The Agency invites comments on these amendments and on the issues discussed in this preamble and,

therefore, is providing a 60-day comment period.

Dated: November 14, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended by adding the following paragraphs to § 261.4(b):

§ 261.4 [Amended]

* * * * *

(b) * * *

(6) Solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(7) Cement kiln dust waste.

These amendments are issued under the authority of Sections 1006, 2002(a) and 3001 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a) and 6921.

[FR Doc. 80-36129 Filed 11-18-80; 8:45 am]

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40 CFR Parts 261 and 262

[SWH-FRL 1675-3]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste Standards for Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Interim final rules and request for comments.

SUMMARY: In regulations promulgated in May, 1980, establishing a federal program for the management of hazardous wastes, EPA excluded from full regulation persons handling hazardous wastes generated in small quantities (40 CFR 261.5, 45 FR 33066, 33120 (May 19, 1980)). This amendment clarifies the operation of the special requirements for hazardous waste generated by small quantity generators. Part 262 of the regulations has also been amended to ensure that these generators determine whether their wastes are hazardous.

DATE: Effective Date: November 19, 1980.

Comment Date: EPA will accept public comments on this regulation until January 19, 1981.

ADDRESSES: Comments on this regulation should be sent to the Docket Clerk [Docket Number 3001], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. and is available for viewing from 9 a.m. to 4 p.m. Monday through Friday, excluding holidays. Among other items, the docket contains the background document for this regulation which has been revised to accommodate these amendments.

FOR FURTHER INFORMATION CONTACT: Robert Holloway, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9200.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. § 6901 *et seq.*, EPA recently promulgated regulations establishing a comprehensive regulatory program for the management and control of hazardous wastes (45 FR 33066 (May 19, 1980)). The regulations, among other things, identify the characteristics of hazardous wastes, list particular wastes as hazardous, and establish standards for generators and transporters of hazardous waste and owners and operators of hazardous waste management facilities.

The regulations also define special requirements for hazardous waste generated by generators who produce less than 1,000 kilograms of hazardous waste during a calendar month. (See 40 CFR 261.5, 45 FR 33120). Hazardous waste generated by a small quantity generator is generally excluded from full regulation provided the generator stores, treats, or disposes of his hazardous waste in facilities specified as acceptable or ensures that his hazardous waste is delivered to such facilities. However, if a small quantity generator generates or accumulates acutely hazardous waste in quantities greater than specified, or if he accumulates more than a total of 1,000 kilograms of hazardous waste at any time, all quantities of hazardous wastes for which an exclusion level is exceeded are fully regulated.

Since the publication of the regulation, members of the regulated community have raised a number of questions concerning the operation of the small quantity exclusion. EPA has been persuaded that, in certain respects, the regulation is ambiguous and does not clearly address certain situations. In addition, the regulation contains certain technical errors which would cause the exclusion to operate in a manner not intended by the Agency or contrary to the manner explained in the preamble to the regulation and the supporting materials. This amendment to the regulation is intended to clarify the original regulation and to correct the errors contained in it.

The revisions to the small quantity generator exclusion principally concern five aspects of the regulation: the determination of who is a small quantity generator; the requirements applicable to hazardous waste accumulated on-site; the requirements applicable to acutely hazardous wastes; the conditions applicable to wastes excluded from full regulation; and the requirements applicable to mixtures. The changes to the regulation are described in this preamble. The underlying rationale and basis for § 261.5 remain unchanged and are set forth in the preamble to the May regulation. (See 45 FR at 33102-33105.)

The background document supporting the requirements for small quantity generators has been revised to explain in greater detail the operation of § 261.5. In addition to describing the changes made by today's amendments, the background document provides guidance on the operation of regulations applicable to the small quantity generator.

It should be noted that the Agency has received a petition from the National Solid Waste Management Association ("NSWMA") which requests the Agency to make substantive revisions to § 261.5. EPA has noticed and requested comments on the petition. (45 68409 (October 15, 1980).) The amendment to § 261.5 published today does not constitute the Agency's response to the NSWMA petition. EPA's action with regard to that petition will be the subject to further notice and/or rulemaking.

II. Amendments to the Regulation

A. *Determination of Small Quantity Generator Status.*

Section 261.5(a) of the May regulation set forth the general test for determining who may qualify as a small quantity generator:

> * * * if a person generates, in a calendar month, a total of less than 1,000 kilograms of hazardous wastes, those wastes are not subject to regulation * * *.

Since publication of the regulation, persons have raised two questions basic to the operation of this section: (a) should the section be keyed to generators rather than persons; and (b) what wastes should be counted in determining the amount of waste generated in a calendar month? The regulation has been revised to resolve both of these questions.

Although it was EPA's intent to key the exclusion levels established in § 261.5 to individual generation sites, the May 19, 1980 regulation refers to "persons" rather than "generators". As these terms are defined in § 260.10 of this Chapter, a corporation (i.e., a person) may comprise numerous facilities that generate hazardous waste, (i.e., generators). Read literally, therefore, § 261.5 makes the Subtitle C regulations and the notification requirements of Section 3010 of RCRA fully applicable to a company which generates, in the aggregate, more than the quantity exclusion level but each of whose facilities generates less than that amount. The revised regulation replaces the prior reference to "persons" with "generators," making it clear that individual facilities which generate hazardous waste in a quantity below the exclusion levels may qualify as small quantity generators.

To provide further clarification, the amended regulation defines a small quantity generator as a generator who generates less than 1000 kilograms of hazardous waste in a calendar month. Thus, this amended regulation makes clear that a generator may be a small quantity generator in one month and a large quantity generator in another month. The recordkeeping and reporting requirements of Part 262 apply, however, only to those periods in which the generator's hazardous waste is subject to full regulation under Part 262. Thus, for example, the annual report of a generator whose waste is subject to full regulation under Part 262 for three months in a year would cover the generator's activity only for those three months.

The second issue resolved by the amended regulation concerns which hazardous wastes should be counted in determining whether a generator generates 1000 kilograms of hazardous waste in a calendar month. One question is how the exclusion of hazardous wastes that are used, re-used, recycled or reclaimed under § 261.6 relates to the § 261.5 requirements. Another set of questions focuses on the potential double-counting of wastes by a generator who removes waste from on-site storage or whose on-site treatment of wastes generates hazardous waste.

The small quantity generator requirements have been revised by the addition of a new paragraph, § 261.5(c), to clarify which hazardous wastes that are being used, re-used, recycled or reclaimed are included in determining small generator status. Section 261.6(a) excludes from regulation wastes that are hazardous because they meet EPA characteristics and that are beneficially used or re-used or legitimately recycled or reclaimed. Wastes that are excluded under § 261.6(a) are not included in the quantity determination of § 261.5. Section 261.6(b), however, makes sludges, listed hazardous wastes, and hazardous wastes containing listed hazardous wastes subject to full regulation during storage and transportation prior to their use, re-use, recycling or reclamation. Because these wastes are subject to Subtitle C regulation, the revised § 261.5 makes clear that these wastes must be included in the quantity determination and are subject to the other requirements of that section. Although this is a result that a careful reading of the May regulation would support, the revised § 261.5 should resolve any ambiguity on this issue.

A number of persons stated that use of the word "generates" in § 261.5 creates some uncertainty about what wastes should be counted in determining eligibility for small quantity generator status. These commenters believed that, without clarification, the rule might lead to double-counting of wastes when they are also treated or stored on-site. If, for example, a generator's manufacturing process generated 600 kilograms of hazardous waste in a month, and he placed that waste in storage, persons were uncertain whether, when that waste was removed from storage, the 600 kilograms was to be counted again in the quantity determination. Counting this quantity a second time would have the effect of substantially lowering the exclusion levels. A new paragraph, § 261.5(d), has been added to make it clear that a generator counts his hazardous waste only when he first generates it. He is not required to count the waste again when he removes it from on-site accumulation or storage [1] or when he produces a hazardous waste from the on-site treatment of his hazardous waste. The amendment is intended to avoid double-counting of wastes and therefore extends only to the on-site treatment or storage of hazardous wastes generated by the small quantity generator. If the generator receives hazardous waste from another person for treatment, the hazardous waste generated by the treatment process must be counted in the generator's quantity determination.

B. *Requirements Applicable to Hazardous Waste Accumulated On-site.*

Section 261.5(b) of the May regulation states that if a generator accumulates more than 1000 kilograms of hazardous waste, these wastes are subject to full Subtitle C regulation. Acutely hazardous wastes, when accumulated, are subject to the lower exclusion limits specified in § 261.5(c) of the May 19, 1980, regulation. After the publication of the regulation, persons questioned how the regulation would apply: whether the generator would be able to use the provisions of § 262.34 allowing on-site storage without a permit for 90 days prior to shipment of the wastes to treatment, storage or disposal facilities; and, if so, how the provisions of that section apply to small quantity generators.

A new paragraph, § 261.5(f), clarifies the manner in which hazardous wastes are regulated when the accumulation limit is exceeded. Because the regulation allows indefinite and unregulated storage of wastes in quantities less than 1000 kilograms, the Agency believes it unreasonable to make this 90 day period start at the time the waste was first generated. Such a result would place generators who exceed the accumulation levels but whose accumulation began more than 90 days prior to exceeding the 1000 kilogram level immediately in violation of the regulatory requirements by storing wastes without a permit or without interim status under Section 3005(e) of RCRA. The revised § 261.5(f) states that at the time the allowable accumulation limit is exceeded, the waste becomes fully regulated and § 262.34 becomes applicable. Section 262.34 provides the generator 90 days to remove the waste from on-site storage without the necessity of having either a permit or interim status for that storage. To take advantage of § 262.34, however, the generator must satisfy the conditions of that section. This will ensure that the generator handles the waste in a satisfactory manner while providing him some time to arrange for proper treatment, storage or disposal.

The revised regulation also clarifies that once the accumulated amounts exceed 1000 kilograms, all of those wastes and those subsequently added to that accumulation are fully regulated until all the waste is sent to a hazardous waste treatment, storage or disposal facility. This rule means that those wastes remain subject to full regulation even if the quantity of wastes accumulated or stored becomes less than 1000 kilograms. In addition, those wastes remain fully regulated regardless of when the wastes are removed from storage or accumulation and regardless of whether the generator is a small

[1] Under the definition of generation, removal from storage is not an act or process that produces a hazardous waste, although it is an act which may subject a waste to regulation. The Agency intends to publish regulations on this subject in the near future.

quantity generator in the month they are removed from storage. Certain persons thought that only the amount exceeding 1000 kilograms was subject to regulation. This position was not, however, supported by the language in the May regulation which stated that, if a person accumulates more than 1000 kilograms, "those accumulated wastes" would be subject to full regulation. The revised language should resolve any ambiguity that may have been created by the original language. The provisions for acutely hazardous waste apply similarly.

C. *Requirements Applicable to Acutely Hazardous Waste.*

Section 261.5(c) of the May regulation sets lower exclusion levels for acutely hazardous discarded chemical products, their off-specification variants, containers and inner liners that held these wastes, and residue and debris resulting from spills of these wastes. The revised regulation, § 261.5(e), clarifies two ambiguities in the regulation: (a) whether the exclusion levels apply to the total amount of acutely hazardous waste generated and (b) whether the exclusion levels apply only to small quantity generators.

With respect to the first question, the language of the regulation has been revised to state that the exclusion levels apply to the aggregate of all of the acutely hazardous wastes subject to a particular exclusion. Thus, if a generator discards in a calendar month 0.5 kilograms of one commerical chemical product listed in § 262.33(e) and 0.5 kilogram each of two other listed commercial chemical products, the total 1.5 kilograms of acutely hazardous wastes would be subject to full Subtitle C regulation. The exclusion thus applies to acutely hazardous wastes in the same manner as it applies to other hazardous wastes. The rationale for aggregating wastes to determine the amount of wastes generated applies with equal force to acutely hazardous waste as to other hazardous waste. The need for full regulatory control of these wastes is the same whether the total is comprised of one listed substance or three such substances.

Second, the regulation is revised to clarify that the lower exclusion levels for acutely hazardous waste apply only to generators who otherwise are deemed small quantity generators. The Agency believes that a generator who produces more than 1000 kilograms of hazardous waste a month and is therefore subject to full regulation should handle his acutely hazardous wastes in the same manner as his other wastes. The basis for the exclusion levels is the administrative impossibility of EPA regulating all generators of hazardous waste. If a generator is subject to regulation on the basis of generating more than 1000 kilograms of hazardous waste, there is no reason to exclude from regulation his small quantities of those wastes which the Agency has identified as acutely hazardous. There will be no additional drain in the administrative demands placed on the Agency and the protection of human health and the environment will be significantly increased.

A final change to § 261.5 has been made with respect to acutely hazardous wastes. Section 261.5(c) of the May regulation established exclusion levels for containers and inner liners that held acutely hazardous waste. A new section, 261.7, has been added to the regulations under separate rulemaking that excludes "empty" containers from regulation. If a container or inner liner that has held acutely hazardous waste is empty, it is not subject to regulation and not subject to the exclusion levels set in § 261.5. The residues of acutely hazardous waste in nonempty containers or inner liners are subject to the exclusion levels of § 261.5(g) and the requirements of the section. The reference to containers and inner liners that appeared in § 261.5(c) of the May regulations is deleted.

D. *Conditions Applicable to Waste Excluded from Full Regulation.*

Section 261.5(d) of the May regulation specified the facilities in which hazardous waste excluded from full regulation could be managed. The Agency inadvertently omitted facilities that beneficially use or re-use, or legitimately recycle or reclaim waste from the list of acceptable facilities. The Congressional policy of promoting resource recovery, as implemented by the Subtitle C regulatory program in § 261.6, would not be served by denying to small quantity generators the same opportunity to use, re-use, recyle or reclaim their waste which is provided to other generators. Accordingly, the regulation is revised to allow small quantity generators to treat or dispose of their waste in such facilities. The regulation is also redesignated § 261.5(g).

Section 261.5(g) has also been revised to state that hazardous waste must be stored on-site in accordance with § 261.5(f). This latter paragraph, as described above, covers the accumulation and storage of wastes on-site. This revision merely reiterates that storing or accumulating wastes on-site under § 261.5(f) is allowed.

Today's amendments make one additional technical correction to the May regulations. Section 261.5(d) required generators, as a condition of the exclusion from full regulation, to determine under § 262.11 whether their wastes were hazardous. Section 262.11(a), however, stated that, if a generator determined that he was subject only to § 261.5, he did not have to determine whether his waste was hazardous. The Agency has corrected this inconsistency by deleting the reference to § 261.5 in § 262.11. The generator of solid waste must determine whether his waste is hazardous before determining whether his waste is conditionally excluded under § 261.5 from full regulation. Without such a determination the generator of hazardous wastes would not know whether any of the Subtitle C requirements, including the reduced requirements, apply to the waste nor whether, if the exclusion levels were exceeded, the full requirements would apply.

E. *Requirements Applicable to Mixtures.*

Section 261.5(e) of the May regulation established a special mixture provision for hazardous wastes which were excluded from full regulation by § 261.5. This provision is redesignated as § 261.5(h) and has not been revised.

A new paragraph, § 261.5(i), is added to make clear that mixtures of solid waste and hazardous wastes which have exceeded an exclusion level are subject to full Subtitle C regulation. Pursuant to § 261.3(a)(3)(ii), a mixture of solid waste and hazardous wastes is a hazardous waste. Members of the regulated community have asked what exclusion level applies to the mixture; for example, whether a mixture containing an acutely hazardous waste that has exceeded an exclusion level remains subject to the lower exclusion levels applicable to that waste. This new paragraph clarifies that the lower exclusion level applies. A contrary result would encourage generators to mix acutely hazardous wastes subject to full regulation (i.e., because they are generated or accumulated in quantities greater than one kilogram) with other hazardous excluded wastes (e.g., those generated in quantities of less than 1000 kilograms a month) and thus escape the regulatory controls which the Agency has determined are essential for the safe handling and management of hazardous wastes.

III. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient

lead time to prepare to comply with major new regulatory requirements. For the amendment to § 261.5 promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the interests of the regulated community and the public. The amended regulation is an integral part of a regulatory program that becomes effective on November 19, 1980. In addition, the principal revisions to the regulation simply clarify and make technical corrections to the regulation. The revisions also allow greater flexibility in the manner in which small quantity generators handle their hazardous waste.

The Agency believes it makes little sense to allow the small quantity generator requirements promulgated on May 19, 1980, to become effective on November 19, 1980, and then to have them substantially revised on a subsequent date by this amendment. Clarification of regulatory requirements and increasing their flexibility are not the types of regulation revision that Congress had in mind when it provided a six month delay between the promulgation and the effective date of revisions to regulations. Consequently, the Agency is setting an effective date of November 19, 1980, for the amendments to §§ 261.5 and 262.11 promulgated in this rulemaking action.

IV. Promulgation in Interim Final Form

These amendments to § 261.5 are designed principally to clarify the manner in which the regulations published in May of 1980 are to operate. EPA has received many questions on the regulation. These questions indicated that there is substantial confusion on the part of the regulated community about the exclusion of generators of small quantities of hazardous waste. Absent immediate effectuation of these clarifying amendments, EPA believes that this confusion will persist after the effective date of the Subtitle C regulations, November 19, 1980. This confusion will lead, EPA believes, to real and substantial hardship for persons subject to the reduced requirements of § 261.5. If uncertain about the rule's application or operation, many responsible generators of hazardous waste may unnecessarily comply with the full Subtitle C regulations. Immediate implementation of the amendment small quantity generator requirements is necessary in order to avoid inadvertantly imposing substantial burdens on literally thousands of generators who are uncertain whether they are excluded from full regulation under § 261.5. Given the real and substantial cost that delay might create, the Agency finds good cause to promulgate these rules without prior notice and opportunity for comment.

V. Request for Comments

The Agency invites comments on all aspects of these amendments to the regulations and on all issues discussed in this preamble. EPA is hopeful that the regulations as revised are reasonable, understandable, and workable. The Agency will be receptive to comments which would improve the regulation.

VI. Regulatory Impacts

The effect of these amendments is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by clarifying the operation of the regulations and increasing their flexibility. The Agency is unable to estimate these reductions.

Dated: November 14, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 261.5 is revised to read as follows:

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

(a) A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in paragraphs (e) and (f) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 265 and Parts 122 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraph (g) of this section.

(c) Hazardous waste that is beneficially used or re-used or legitimately recycled or reclaimed and that is excluded from regulation by § 261.6(a) is not included in the quantity determinations of this section, and is not subject to any requirements of this section. Hazardous waste that is subject to the special requirements of § 261.6(b) is included in the quantity determinations of this section and is subject to the requirements of this section.

(d) In determining the quantity of hazardous waste he generates, a generator need not include:

(1) His hazardous waste when it is removed from on-site storage; or

(2) Hazardous waste produced by on-site treatment of his hazardous waste.

(e) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under Parts 262 through 265 and Parts 122 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA:

(1) A total of one kilogram of a commercial chemical products and manufacturing chemical intermediates having the generic names listed in § 261.33(e), and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in § 261.33(e); or

(2) A total of 100 kilograms of any residue or contaminated soil, water or other debris resulting from the clean-up of a spill, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in § 261.33(e).

(f) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in paragraphs (e)(1) or (e)(2) of this section, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under Parts 262 through 265 and Parts 122 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA. The time period of § 262.34 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(g) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section, the generator must:

(1) Comply with § 262.11 of this chapter;

(2) If he stores his hazardous waste on-site, store it in compliance with the requirements of paragraph (f) of this section; and

(3) Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 122 of this chapter;

(ii) In interim status under Parts 122 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 123 of this chapter;

(iv) Permitted, licensed or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or

(B) Treats his waste prior to beneficial use or re-use, or legitimate recycling or reclamation.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous wastes identified in Subpart C.

(i) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

2. Section 262.11(a) is revised to read as follows:

§ 262.11 Hazardous waste determination.

(a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4.

* * * * *

These amendments are issued under the authority of Sections 1006, 2002(a) and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), and 6922.

[FR Doc. 80-36130 Filed 11-18-80; 8:45 am]
BILLING CODE 6560-30-M

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40 CFR Part 262

[SWH-FRC 1675-4]

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: In regulations promulgated in May, 1980, establishing a federal program for the management of hazardous wastes, EPA placed requirements on generators of hazardous waste that accumulated their waste on the site of generation prior to shipment to off-site hazardous waste management facilities [40 CFR § 262.34, 45 FR 33066, 33143 (May 19, 1980)]. One of these requirements was that a generator ship all accumulated waste off-site in 90 days or less. This amendment eliminates the distinction between accumulation for on-site and off-site treatment, storage or disposal, provided that, within 90 days, the waste is sent to a hazardous waste management facility that is either permitted or in interim status. The other requirements of § 262.34 are not changed by this rule.

DATES: Effective Date: This requirement is effective on November 19, 1980. Comment date: Comments are due January 19, 1981.

ADDRESSES: Comments should be addressed to the Docket Clerk (Docket 3002), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Rolf Hill, Office of Solid Waste, (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9145.

SUPPLEMENTARY INFORMATION:

I. Introduction

In regulations promulgated in February and May, 1980, EPA established standards applicable to generators of hazardous waste. 40 CFR Part 262, 45 FR 12722 (February 26, 1980), 45 FR 33140 (May 19, 1980). These standards, among other things, require generators to initiate a manifest to track the movement of hazardous waste, maintain records, and provide proper containers, labels and placards for the transportation of hazardous waste. Most of these requirements apply only to generators who send their hazardous wastes off the site of generation for treatment, storage or disposal. Some of these requirements, however, apply to generators who treat, store or dispose of their wastes on the site of generation. (See 40 CFR 262.10(b)).

Recognizing that many generators would accumulate hazardous waste for a period of time prior to shipping the waste to an off-site hazardous waste management facility, EPA set special requirements in § 262.34 which, if met by the generator, would allow him to accumulate the waste on-site without having to obtain a RCRA permit for a storage facility under Part 122 of the regulations or comply with the applicable standards under Parts 264 and 265 of the regulations.

The basis and rationale for these special 90-day accumulation rules appear in the preambles to, and the background documents supporting, the generator regulations first published in Feburary, 1980, and then revised in May, 1980. See 45 FR 12722, 12730 (February 26, 1980) and 45 FR 33140, 33141 (May 19, 1980). By allowing short-term accumulation without a permit, the regulation reflects the congressional intent that the RCRA program not interfere with the manufacturing process. See H.R. Rep. No. 94-1491, 94th Cong. 2d Sess. 26 (Sept. 9, 1976). Generation of hazardous waste necessarily requires some accumulation of that waste prior to taking it to a hazardous waste management facility. On the basis of information received in the comment period, the Agency selected ninety days as a period that provided sufficient time for such accumulation to occur in all reasonable situations.

Holding hazardous waste for a short period, however, entails many of the same risks to human health and environment as long-term storage, and therefore the Agency imposed specific requirements for short-term accumulation. The special requirements of § 262.34 require the generator to (1) ship the wastes off-site within 90 days; (2) place the waste in containers or tanks meeting specified technical standards; (3) mark the date accumulation began on the container or tank; (4) properly label and mark the containers; and, (5) comply with the Part 265 regulations concerning preparedness and prevention, contingency plans and emergency procedures. These requirements are designed to ensure that short-term accumulation of hazardous wastes will be done in a manner that ensures protection of human health and the environment.

Since the publication of the regulations, members of the regulated community have raised two questions that are basic to the application and operation of this regulation. First, these persons have stated that the distinction between accumulation of hazardous waste prior to off-site shipment and accumulation prior to on-site treatment, storage or disposal is arbitrary and that the 90-day accumulation provision should apply to both types of accumulation. Second, these persons have stated that although the special 90-day accumulation requirements of § 262.34 may be appropriate for the more centralized areas and facilities where hazardous wastes are accumulated prior to off-site transport or ultimate on-site disposition, they are more stringent than necessary for the accumulation and very short-term storage of wastes at areas where the wastes are generated and initially

accumulated—often in small containers—prior to movement to the more centralized on-site accumulation and storage areas.

The amendment being promulgated today responds to the first of these concerns. For reasons discussed below, however, EPA believes that more information is necessary prior to ascertaining the need for amending the regulations to respond to the second concern.

II. On-site Accumulation Prior to On-site Treatment, Storage or Disposal

The effect of the current regulations is to allow one class of generators (i.e., those who ship their wastes off-site) to "accumulate" their waste for up to 90-days without having a permit or interim status and to require all other generators (i.e., those who treat, store and dispose of the wastes on-site) to obtain a RCRA permit or interim status for the same activity. The standards applicable to both classes, however, are similar. Generators who accumulate waste on-site under § 262.34 would have to store their wastes in compliance with virtually all of the technical requirements of Part 265 and also satisfy many of the general requirements of that Part, e.g., prepare contingency plans and emergency procedures. The principal difference the Agency had discerned between these two classes of generators that was that the areas used for accumulation by the generator who performed such activities on-site would be included in their permit covering the other on-site treatment, storage and disposal facilities. In addition, certain provisions of the Part 265 regulations apply to the accumulation areas of generators who manage their wastes on-site; these include security, financial responsibility, closure and post-closure requirements.

EPA now believes, however, that the regulations as currently written impose substantially different requirements for generators who ship their wastes off-site as opposed to those who do not. These differences do not appear warranted. The most important of these differences concerns eligibility for interim status if short-term accumulation is considered storage for generators who treat, store or dispose of their wastes on-site. To obtain interim status a storage facility must be "in existence" on November 19, 1980. Section 3005(e), 42 U.S.C. § 6925(e) as amended by the Solid Waste Disposal Act Amendments of 1980, P.L. 96-482 (October 21, 1980). A generator who sends his wastes off-site would be able to construct a new loading dock or storage shed for short-term accumulation; a generator who does not send his wastes off-site could not construct a new loading dock (i.e., a new storage facility) without obtaining a RCRA permit. Second, although applying for a permit for these accumulation areas may not entail significant increased burden, the terms and conditions of the permit could impose requirements beyond those required for generators who ship their wastes off-site. In addition, other differences between on-site accumulation and on-site storage may emerge as the regulations are interpreted and applied.

EPA believes that there is no basis for the distinction and accordingly has amended the requirement of § 262.34(a)(1) that accumulated wastes be shipped off-site within 90 days. The requirements of § 262.34 are designed to ensure protection of human health and the environment during short-term accumulation. The destination of the waste does not change the protection that this rule ensures. Section 262.34 requires that wastes that are accumulated on-site still must, within 90 days, go to treatment, storage or disposal facilities which are permitted or in interim status. The regulation now provides that such facilities may be on-site as well as off-site; the manner of regulation and the degree of environmental control is the same for these facilities.

The selection of a 90-day period in the original rule reflected the maximum accumulation time that the Agency thought was necessary prior to transporting wastes off-site. The generator does not wholly control the timing of the transportation because arrangements have to be made with the transporter and the hazardous waste management facility. The situation is obviously different if the generator is sending his waste to a treatment, storage or disposal facility located on the site of generation. In this situation, the generator has greater control over the handling of the waste and the timing of its shipment. The Agency solicits information on whether given this difference whether a shorter period, say 30 days, should be provided for generators who subsequently send their wastes to an on-site treatment, storage or disposal facility.

III. Application of Requirements to All Accumulation Areas

In promulgating the regulations establishing the requirements for on-site accumulation, EPA assumed that accumulation generally would occur in discrete areas in the manufacturing complex where wastes would be held prior to shipment to a treatment, storage or disposal facility. Technical standards for tanks or containers, the preparation of contingency plans and similar requirements are appropriate for loading docks, storage buildings and sheds, and other areas in a manufacturing complex where hazardous wastes are collected and accumulated.

Members of the regulated community, however, have pointed out that, within a manufacturing complex, there may be dozens of places where hazardous wastes are collected during daily operations prior to taking a container containing hazardous waste to the loading dock or other accumulation area. These commenters have questioned the appropriateness of applying the requirements of § 262.34 to each place where hazardous wastes may be initially collected.

EPA believes, however, that the requirments of § 262.34 are appropriate for both centralized and satellite accumulation areas. The Agency, however, is soliciting information on whether, in some situations, different requirements should govern these accumulation activities.

Whether at satellite or centralized accumulation areas, the hazardous waste requires proper management in order to minimize the threat to human health and the environment. The requirements of § 262.34 are designed to provide such protection. Containers that meet DOT specifications and tanks that meet Part 265 design and operating requirements appear necessary and appropriate for the accumulation of hazardous waste regardless of whether the accumulation occurs at a centralized facility or in different places within a plant. The other requirements of § 262.34 similarly appear appropriate to all accumulation activities on the site of generation; these include marking and labeling containers; weekly inspections of containers; locating of containers holding ignitable and reactive wastes away from the property line; requirements concerning preparedness and prevention, contingency plans and emergency response and personnel training. The protection that these requirements ensure appear appropriate and necessary wherever hazardous wastes are accumulated.

The Agency recognizes that there may be certain stituations in which the requirements of § 262.34 might not work well for the initial collection and accumulation of hazardous waste. For example, the Agency does not expect a company to engage in major reconstruction of a facility simply to be able to fit a DOT container beneath a hard-to-reach leaky pipe. The Agency does, however, want to ensure that all

hazardous waste, once generated, are safely and properly handled. The Agency requests comments on situations in which the requirements of § 262.34 may be inappropriate and on the manner in which EPA should handle such situations.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. For the amendments to § 262.34 promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the interests of the regulated community and the public. The regulatory provision that this amendment modifies takes effect on November 19, 1980. In the absence of the immediate effectuation of this amendment, generators who accumulate wastes for on-site treatment, storage or disposal must prepare to operate these facilities as fully regulated hazardous waste storage facilities on and after November 19, 1980. This would include preparation and submission of a Part A permit application covering the accumulation area.

The Agency believes it makes little sense to allow the requirements promulgated on May 19, 1980, to become effective on November 19, 1980, and then have them substantially modified on a subsequent date, i.e., the six-month effective date for these amendments. Leasing of regulatory requirements is not the type of revision to regulations for which Congress intended a six-month delay occur between its promulgation and effective date. Consequently, the Agency is setting an effective date of November 19, 1980, for the amendment to § 262.34 promulgated in this rulemaking action.

V. Interim Final Promulgation

This regulation is being promulgated in interim final form. The reasons for taking this exceptional procedure are similar to those supporting the immediate effective date. The delay involved in initiating normal rulemaking would cause substantial hardship on generators who treat, store or dispose of their hazardous wastes on-site. During the pendency of rulemaking, these generators would not be able to construct new accumulation areas in their manufacturing facilities without obtaining a RCRA permit. Because such areas are intimately tied to the manufacturing process itself, such a delay might in effect create a prohibition of redesign and reconstruction of these manufacturing units.

Although the Agency does not adopt this procedure lightly, the circumstances indicate that the use of interim final promulgation is appropriate. As one court has noted "[i]t is an appropriate safety valve to be used where delay would do real harm." *U.S. Steel Corp.* v. *EPA*, 595 F.2d 207, 214 (5th Cir., 1979). EPA believes that the effect of delaying promulgation of this amendment would cause substantial, and unnecessary, hardship on a large number of manufacturing operations. In this situation, the use of advance notice and comment procedures would be contrary to the public interest and therefore good cause exists for adopting this amendment in interim final form. See 5 U.S.C. § 553(b)(B).

VII. Request for Comments

The Agency invites comments on all aspects of this amendment to the regulation and on all the issues discussed in this preamble. The Agency has recently requested comments of one aspect of § 262.34, its applicability to product storage tanks. 45 CFR 72024 (October 30, 1980). The Agency will consider all comments received on § 262.34 prior to promulgating this rule in final form. EPA desires to formulate sound and sensible regulations concerning the proper handling of hazardous waste. The requirements of § 262.34 are an important aspect of this broader concern, and, if commenters have suggestions on ways to improve this regulation, the Agency would be receptive to their suggestions.

VIII. Regulatory Impacts

The effect of this amendment is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by removing accumulation areas of generators who send accumulated wastes to on-site disposal facilities from full regulation as storage facilities. The Agency is unable to estimate these cost and impact reductions because it does not have an estimate of the number of such areas that otherwise would be fully regulated. For the reasons already discussed, notwithstanding these cost and impact reductions, the Agency believes that human health and environmental protection will not be reduced by this action.

Dated: November 14, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

§ 262.34 [Amended]

1. In § 262.34, paragraph (a)(1) is revised to read as follows.

(a) A generator may accumulate hazardous waste on-site without a permit or without having interim status, provided that:

(1) All such waste is, within 90 days, shipped off-site to a designated facility or placed in an on-site facility that is permitted under Part 122 of this Chapter, has interim status under Parts 122 of this Chapter, or is authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 123 of this Chapter.

* * * * *

These amendments are issued under the authority of Sections 1006, 2002(a), 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), 6922, 6923, 6924 and 6925.

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40 CFR Parts 122, 260, 264 and 265

[SWH-FRL 1675-5]

Hazardous Waste Management System

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: In regulations promulgated in May of 1980, the Environmental Protection Agency ("EPA") established a comprehensive program for the handling and management of hazardous wastes. 45 FR 33066 (May 19, 1980). The regulations, among other things, set forth substantive requirements for the treatment and storage of hazardous wastes and require owners and operators of treatment and storage facilities to have Resource Conservation and Recovery Act (RCRA) permits or interim status pursuant to Parts 265 and 122 of the regulations. Certain activities which persons may take in response to spills of hazardous wastes or materials which, when spilled, become hazardous waste might be considered treatment (e.g., absorption, neutralization) or storage (e.g., diking, containment). In this action EPA makes clear that the requirements for treatment and storage are not applicable to actions taken to