

US EPA ARCHIVE DOCUMENT

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Parts 264 and 265**

[SWH-FRC 2168-2]

**Standards Applicable To Owners and
Operators of Hazardous Waste
Treatment, Storage, and Disposal
Facilities; Liability Coverage
Requirements**

July 6, 1982.

AGENCY: Environmental Protection
Agency.**ACTION:** Final rule and notice of
extension of effective date.

SUMMARY: The effective date for qualifications of insurers providing liability insurance used to satisfy liability coverage requirements applicable to owners or operators of hazardous waste management facilities, as such requirements are included in 40 CFR Parts 264 and 265, is extended from July 15, 1982, to October 16, 1982. The effective date for the rest of the liability coverage requirements remains July 15, 1982. This extension is being provided to allow 6 months between the date of promulgation and the effective date for the insurer qualification provision, in accordance with Section 3010(b) of the Resource Conservation and Recovery Act of 1976, as amended. During the period between July 15 and October 16, 1982, owners or operators may use certificates of insurance or policy endorsements that do not certify to the qualifications of the insurer.

DATES: Effective date for 40 CFR 264.147(a)(1)(ii), 264.147(b)(1)(ii), 265.147(a)(1)(ii), and 265.147(b)(1)(ii), is changed to October 16, 1982. Effective date for 40 CFR 264.147(g) and 265.147(g) is July 15, 1982.

ADDRESS: The public docket for the liability coverage regulation is located in Room S269-C, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C., which is open to the public from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Call the RCRA/Superfund Hotline at (800) 424-9346 (toll-free) or (202) 382-3000, or Emily Sano at (202) 382-4503.

SUPPLEMENTARY INFORMATION:**A. The Liability Coverage Requirements**

On April 16, 1982, EPA promulgated a revised interim final rule, 40 CFR 264.147 and 265.147, which established liability coverage requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities subject to the Federal regulatory program under

the Resource Conservation and Recovery Act of 1976, as amended (47 FR 16544-16561).

The April 16 regulation requires all such owners or operators to demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of their facilities. The minimum amount of this coverage is \$1 million per occurrence, \$2 million annual aggregate. Owners or operators of landfills, surface impoundments, or land treatment facilities must also demonstrate financial responsibility for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence, \$6 million annual aggregate.

The required liability coverage may be demonstrated through liability insurance or by passing a financial test. Proof of liability insurance used to satisfy the requirements must be submitted in the form of an endorsement to the insurance policy or a certificate of insurance. The wording of these documents is specified in § 264.151 (i) and (j), respectively.

The April 16 regulation revised liability coverage requirements that were promulgated on January 12, 1981 but never put into effect. Rules for liability coverage were proposed on December 18, 1978, and May 19, 1980.

Insurer Qualifications. The April 16 regulation states that "Each insurance policy must be issued by an insurer which, at a minimum, is licensed or eligible as an excess or surplus lines insurer, in one or more States." (§§ 264.147(a)(1)(ii), 264.147(b)(1)(ii), 265.147(a)(1)(ii), and 265.147(b)(1)(ii).)

The background of this requirement is as follows. The proposed liability coverage requirements of May 19, 1980 (45 FR 33273), provided that owners or operators must obtain insurance from insurers licensed or eligible to insure in the jurisdiction where any of the owner's or operator's facilities are located. The Agency received comments to the effect that participation of insurers should not be so restricted. The Agency evaluated the issue and at that time concluded that it was preferable not to establish minimum qualifications for insurers in order not to restrict the market and availability of insurance. The January 12, 1981, regulations, therefore, did not include qualifications for insurers. Several commenters on those regulations, however, urged EPA to establish insurer qualifications.

Upon reconsideration of this issue, the Agency decided that minimum qualifications should be included to help assure the integrity of insurers whose policies are used by owners or operators

to meet the liability coverage requirements. Therefore the revised regulations of April 16, 1982, require owners or operators to obtain insurance from insurers which are licensed to transact the business of insurance or are eligible as an excess or surplus lines insurer, in one or more States. These qualifications will assure that insurers are subject to some regulatory oversight by State insurance departments but will still permit broad participation in providing the insurance.

In the preamble to the revised regulations, the Agency discussed comments received on the issue of insurer qualifications and requested further public comment. Depending on the results of evaluating the comments received and findings of further study, the Agency may decide to propose revisions to the insurer qualifications or to retain them as they are.

**Effective Date of the Regulation of April
16, 1982**

The effective date of the liability coverage requirements as a whole was set at July 15, 1982, or 90 days from the date of promulgation. By this date, owners or operators must demonstrate liability coverage for sudden accidental occurrences. The requirement for coverage of nonsudden accidental occurrences is phased in over 3 years because of the current limited availability of liability insurance for nonsudden accidental occurrences. The largest owners or operators of landfills, surface impoundments, or land treatment facilities (\$10 million or over in annual sales or revenues) must have coverage for nonsudden accidental occurrences by January 15, 1983; those between \$5 million and \$10 million must have this coverage by January 15, 1984; and all others must have coverage by January 15, 1985.

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect 6 months after promulgation. The primary purpose of the provision is to allow persons affected by the rulemaking sufficient lead time to prepare for compliance with major new regulatory requirements. The Agency set the effective date of the revised rules at 3 months rather than 6 months from the date of promulgation because in general the previous requirements were not substantially changed except in ways that add greater flexibility and feasibility regarding compliance.

B. Extension of Effective Date for Insurer Qualification Requirement

Since promulgation of the April 16, 1982 regulation, the Agency has been advised by a large insurer that the July 15, 1982 effective date afforded insufficient time in which to obtain the necessary State qualifications. In view of this concern and the fact that, with regard to insurer qualifications, the April 16, 1982 regulation imposed a more stringent requirement than did the January 12, 1981 regulation, EPA has decided to extend the effective date for the insurer qualification requirement until October 16, 1982. As required by Section 3010(b) of RCRA, this date is 6 months after the promulgation of the April 16, 1982 regulation. For reasons stated above, the Agency has retained the July 15, 1982 effective date for the remainder of the regulation.

As noted above, insurance used to satisfy the liability coverage requirements must be evidenced by a policy endorsement or certificate of insurance worded as specified in § 264.151 (i) and (j). The specified wording for both the endorsement and the certificate of insurance contains a statement certifying that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. In conformity with the extension of the effective date for the insurer qualification requirement, the Agency will accept, until October 16, 1982, endorsements and certificates of insurance that do not certify to the insurer's qualifications. This is provided by adding a paragraph (§§ 264.147(g) and 265.147(g)) to the regulations which states that notwithstanding any other provision of these regulations, owners or operators using insurance to satisfy the liability coverage requirements may use, until October 16, 1982, endorsements and certificates that do not certify to insurer qualifications.

As of October 16, 1982, the insurer qualifications requirement will become effective. On that date, any insurance used to satisfy the liability coverage requirements must be issued by insurers meeting the qualifications specified in the April 16, 1982, regulation, and endorsements or certificates of insurance must conform to § 264.151 (i) or (j). Any owners or operators who had submitted endorsements or certificates without the statement certifying to the qualifications of the insurer will have to submit new ones conforming to § 264.151 (i) of (j) to the Regional Administrators of the EPA Regions in which their facilities are located.

C. Executive Order 12291, Paperwork Reduction Act, and the Regulatory Flexibility Act

The Agency has concluded that today's action extending the effective date for the insurer qualifications requirement is not a major rule for which a regulatory impact analysis must be prepared under Executive Order 12291.

Under the Paperwork Reduction Act of 1980, the Office of Management and Budget reviews reporting requirements in regulations in order to minimize reporting burdens and cost to the government. OMB has approved the reporting requirements of the liability coverage regulation (notice of approval was published July 1, 1982, 47 FR 28626). Today's action allows owners and operators the option of using, until October 16, 1982, endorsements and certificates of insurance that do not contain the statement certifying to the insurer's qualifications. Such endorsements and certificates of insurance must be replaced with endorsements and certificates conforming to § 264.151 (i) and (j) by October 16. The Agency does not consider this resubmission of documents, which stems from use of the option, to be a significant added paperwork burden.

The Regulatory Flexibility Act requires Federal Agencies to analyze the impact of regulations on small entities. Such an analysis of the liability coverage requirements is being undertaken. Extension of the effective date for the insurer qualifications requirement will provide additional time to some owners and operators, whose insurers do not presently meet the qualifications specified in the regulations, to obtain coverage fully conforming to the April 16, 1982, regulations. To the extent such owners or operators are small entities, additional flexibility has been provided. The Agency has concluded that a Regulatory Flexibility Analysis specifically for this extension is not necessary.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of the Executive Order 12291.

List of Subjects in 40 CFR Parts 264 and 265

Hazardous materials.

Dated: July 9, 1982.

Anne M. Gorsuch,
Administrator.

For reasons set out in the preamble, Title 40 CFR Parts 264 and 265 are amended as set forth below.

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

Subpart H—Financial Requirements

1. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

2. Section 264.147 is amended by adding paragraph (g) as follows:

§ 264.147 Liability requirements.

* * * * *

(g) Notwithstanding any other provision of this Part, an owner or operator using liability insurance to satisfy the requirements of this section may use, until October 16, 1982, a Hazardous Waste Facility Liability Endorsement or Certificate of Liability Insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one or more States.

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

Subpart H—Financial Requirements

1. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

2. Section 265.147 is amended by adding paragraph (g) as follows:

§ 265.147 Liability requirements.

* * * * *

(g) Notwithstanding any other provision of this Part, an owner or operator using liability insurance to satisfy the requirements of this section may use, until October 16, 1982, a Hazardous Waste Facility Liability Endorsement or Certificate of Liability Insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one or more States.

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