

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 122, 123, 262, 264, and 265**

[SW-FRL-2156-5]

Hazardous Waste Management System: Standards Applicable to Generators of Hazardous Waste and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule

SUMMARY: The Environmental Protection Agency (EPA) is today proposing amendments to its hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA). These amendments would replace the annual reporting requirements for hazardous waste generators and owners and operators of hazardous waste treatment, storage, and disposal (TSD) facilities with a biennial survey of representative samples of those populations. This approach will provide verifiable data on a wider range of topics, better serve EPA's long term regulatory needs under RCRA, and reduce significantly the information burden on the regulated community.

DATE: Comments on these proposed amendments are due on or before November 26, 1982.

ADDRESSES: Comments on these amendments should be sent to the Docket Clerk (Docket 3002/3004-RCRA Survey), 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 rulemaking is available at Room S-269, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424-9346 (toll-free), or in Washington, D.C. (202) 382-3000.

For technical information, contact Robert B. Axelrad, office of Solid Waste, (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460, (202) 382-5218.

SUPPLEMENTARY INFORMATION:

Preamble Outline:

I. General Authority.

II. Background.

A. Annual Reporting Requirements.

- B. Delayed Compliance Date.
- III. Biennial Survey Approach.
 - A. Information Needs.
 - B. Summary of Survey Process.
 - C. Rationale For Surveys Instead of Annual Reports.
 - D. Initial Survey.
 - E. Frequency of Survey.
 - F. Confidentiality of Information.
 - G. Elimination of Reporting Exemptions.
 - H. Cooperation With States.
- IV. Conforming Amendments.
 - A. Annual Report Forms.
 - B. Groundwater Monitoring Reporting.
 - C. State Authorization.
 - V. Executive Order 12291.
 - VI. Paperwork Reduction Act.
 - VII. Regulatory Flexibility Act.
 - VIII. Request for Comments.

I. General Authority

Today's proposed amendments are issued under Sections 2002, 3002, 3004, and 3007 of the Solid Waste Disposal Act, as amended by Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

Section 3002 (6) requires generators of hazardous waste to submit reports at such times as the EPA Administrator deems necessary, setting out the quantities of hazardous wastes generated and their disposition. Section 3004 (2) of RCRA requires EPA to establish requirements respecting satisfactory reporting from hazardous waste TSD facilities. In addition, Section 3007(a) permits EPA to require any person who generates, treats, stores, disposes, or otherwise handles (or had handled) hazardous waste to furnish information to the Agency upon request. Information may only be requested under Section 3007, however, if it is to be utilized in the development of the RCRA regulatory program or in enforcing the provisions of Subtitle C.

The existing annual report requirements were promulgated under the authority of Sections 3002 and 3004. The requirement to respond to biennial surveys will be issued under the authority of Sections 3002 and 3004 as well as under the authority of Section 2002(a) (general rulemaking authority) and Section 3007. Section 3007 does not require EPA to go through rulemaking to require reporting. However, since one of the purposes of the biennial survey is to comply with the requirement in Section 3002 and 3004 that EPA issue regulations establishing reporting standards for generators and treatment, storage, and disposal (TSD) facilities, EPA is proposing the survey as a regulation.

EPA's primary reason for adding Section 3007 to the authorities relied on is that the biennial survey may seek information that EPA cannot require to be submitted under Sections 3002 and

3004. Section 3007 contains no limitations on the kinds of data that the Agency can collect concerning hazardous waste, as long as the data are to be used for regulatory development or enforcement purposes.

Second, under Section 3007, EPA may seek information from handlers located in States granted interim or final authorization. The validity of national statistics rests upon EPA's ability to obtain uniform information from handlers located in all States, regardless of whether EPA or the State administers the RCRA program. Sections 3002 and 3004 do not permit EPA to obtain information directly from handlers located in interim or final authorized States; thus, EPA also will gather the information it needs under the authority of Sections 3007 and 2002(a).

II. Background**A. Annual Reporting Requirements**

In February and May of 1980, EPA promulgated regulations establishing the reporting requirements authorized by Sections 3002(6) and 3004(2) of RCRA. Under 40 CFR § 262.41, generators who ship hazardous wastes off-site are required to submit reports annually by March 1 for the reporting year ending the previous December 31. The reports are to specify, among other things, the amount of each type of hazardous waste shipped to each TSD facility during the reporting year, as well as the names, addresses, and EPA identification numbers of all transporters utilized in such shipments. Under 40 CFR § 264.75 and § 265.75, the owners or operators of hazardous waste TSD facilities must submit annual reports specifying, among other things, the amount of each type of hazardous waste received from each generator from which the facility received hazardous waste during the reporting year.

Annual reports from generators and all TSD facilities would have been due March 1, 1981, covering the reporting period from November 19, 1980, when the RCRA regulations took effect, through December 31, 1980. However, on January 26, 1981, EPA suspended the reporting requirements for the 1980 reporting year (46 FR 8395) because the Agency concluded that it would not be adequately prepared by March 1, 1981 to collate, analyze, and make use of the data from the reports, given the heavy workload the Agency was experiencing in the initial phase of the RCRA regulatory program.

B. Delayed Compliance Date

In 1981, EPA began to reevaluate this reporting requirement in light of EPA's current and future information needs. This review led EPA to conclude that a biennial survey approach was preferable to the existing annual report requirement. EPA delayed the compliance date for this requirement from March 1, 1982, to August 1, 1982 (47 FR 7841, February 23, 1982) to provide the Agency with time to propose and promulgate the appropriate amendments. Today's proposal is intended to accomplish this purpose. The current status of this requirement, pending completion of this rulemaking, is described in a separate notice in today's **Federal Register**.

III. Biennial Survey Approach

A. Information Needs

In order to carry out its responsibilities adequately under RCRA, EPA needs certain information to determine the extent of the hazardous waste problem nationwide, set priorities for addressing those problems, and determine the nature and direction of future regulatory development. Specifically, EPA needs to know: how much hazardous waste is being generated, where (generally) it is being generated; where hazardous wastes are being shipped for treatment, storage, and disposal; the nature of the disposition of such wastes; and the nature and extent of the nation's capacity to treat, store, and dispose of regulated hazardous wastes. In addition, the Agency will need data on specific topics to support future rulemaking activity.

The annual report requirement was intended to provide a summary of some of this information (which would otherwise be available only through a compilation of generator and TSD facility logs and other sources) through across-the-board reporting by all generators and TSD facilities. However, the Agency now proposes a more efficient and more reliable way of obtaining more specific information through a biennial survey of statistically valid samples of generators and TSD facilities.

B. Summary of the Survey Process

EPA is proposing a statistical sampling approach that would provide better, more reliable data at lower cost than the annual report. Specifically, we are proposing to survey approximately 10 percent of the population of

hazardous waste generators and TSD facilities once every two years.¹

In order to obtain more precise statistics, a stratified sample will be drawn from the total population of generators and TSD facilities located in all 50 States, including those located in States granted interim or final authorization to administer their own hazardous waste regulatory programs under RCRA. The samples may be stratified according to handler characteristics (such as size, location, and type of industry) which appear to contribute significantly to variation within the generator and TSD facility populations. Stratification will help ensure sufficient numbers of responses within each handler category to produce reliable descriptive statistics with minimal margins of error. Sample strata may vary, depending upon the nature of the specific information required by the Agency in any given year. Varying the sample selection criteria also will help the Agency spread out the information burden over time.

Separate survey forms containing distinct data requests will be mailed to generators and to TSD facilities. EPA will provide assistance in completing the survey forms through the RCRA hotline.

EPA intends to follow-up the survey mailings with telephone and mail reminders to those who don't answer the survey. EPA can pursue cases of persistent non-response through the use of compliance letters and other enforcement actions authorized under Section 3008.

EPA may conduct telephone interviews and inspections with subsets of the sample populations to verify the accuracy of the survey responses. The survey forms will be designed to facilitate data validation. In addition, information submitted in survey responses will be cross-checked against EPA's existing profiles of the regulated community (such as the Section 3010 handler notification and the TSD facility Part A permit application data bases) to identify inaccurate or misleading responses. Such data validation procedures are essential to the production of reliable statistics.

C. Rationale for Surveys Instead of Annual Reports

EPA's proposal to replace the annual reporting requirements with a biennial survey is based on three factors. The survey will provide: (1) More detailed

information; (2) better national data; and (3) reduced paperwork burdens.

The survey approach will yield more information because the Agency intends to ask for more detailed information in the surveys than it would have through the annual report. For example, the first survey of TSD facilities will ask for cost information and detailed descriptions of technologies, in addition to the data the annual report would provide on the types and quantities of wastes received. The generator survey will obtain data on hazardous waste use, recycling, and reclamation in addition to data the annual report would have collected on each off-site facility to which waste was shipped and the types and quantities of wastes generated.

The survey approach will provide better national data on the generation, storage, treatment, and disposal of hazardous waste because it will cover handlers in all States rather than only those handlers located in unauthorized States. The current annual reporting requirements allow EPA to collect annual reports only from handlers located in States without interim or final authorization to conduct their own hazardous waste programs. Because of the low (and diminishing) number of States that remain unauthorized, the annual report would not provide EPA with the national data it needs to adequately characterize hazardous waste management trends. Although EPA conceivably could require authorized States to provide EPA with the data the States collect through their own annual reports, the variety of forms and data processing systems used by the States would probably preclude timely and efficient data analysis.

Finally, EPA will be able to reduce substantially the paperwork burdens associated with its information collection activities without impairing the data base. Generally, only 10% of the regulated community would have to take the time to complete the biennial survey forms following completion of this rulemaking, and they will be required to do so only half as frequently.

We have considered three other major issues in proposing a survey approach: compliance incentives, enforcement value, and State information needs. These will be discussed in detail below.

1. *Compliance Incentives.* We considered whether the survey approach provides adequate incentives for owners or operators to comply with recordkeeping requirements. The sample survey approach does provide such incentives.

First, since any handler may be chosen as part of the sample, all

¹ The generator sample generally would be less than 10 percent, the TSD sample more than 10 percent, and the average for facilities and generators together approximately 10 percent. However, sample sizes may vary from year to year.

handlers must be prepared when surveyed to provide the Agency with detailed information describing their hazardous waste operations, based upon accurate, up-to-date records. Second, there is a greater incentive to respond accurately to the surveys since the smaller respondent population will increase the chance that an individual survey response will be verified by EPA by telephone or by a site visit. EPA and States will be inspecting large numbers of facilities each year. Inspectors regularly check for evidence of improper or inadequate recordkeeping on the part of owners and operators. Failure to maintain proper recordkeeping represents grounds for enforcement actions at either the State or federal level.

2. Enforcement Value. Perceived values of the annual report as an enforcement tool include: a) across-the-board information on each and every TSD facility, and b) the evidentiary value of a signed statement certifying the accuracy of the data obtained from each generator and TSD facility. The latter statement could be used as evidence of criminal intent in legal proceedings.

EPA does not believe that substituting a biennial survey for the annual report eliminates an important enforcement tool. One reason is that all of the information required in the annual report will still be available in generator and TSD facility operating logs, manifests and permit applications. Second, specific generators or facilities known to have past compliance problems could be included in future survey sample populations. (Of course, EPA would not include responses from these facilities or generators when estimating statistics for the general population.) Finally, survey respondents still must sign certified statements attesting to the accuracy of the information in the survey.

3. State Information Needs. Replacing the annual report with a biennial survey will not prohibit States from obtaining additional data on hazardous waste handlers in their States. RCRA does not prohibit States from establishing more stringent requirements than the federal regulatory program.

In addition, EPA intends to make available to the States all information obtained regarding the generation of hazardous waste and its treatment, storage, and disposal to the extent permitted under EPA's business confidentiality regulations. (Section H, Cooperation with States, contains a more complete discussion of potential areas for State and federal cooperation in the survey process.)

D. Initial Survey

During the summer of 1982, EPA is conducting a major survey of the generator and TSD facility populations in support of its Regulatory Impact Analyses (RIAs) on the RCRA regulations. These RIAs are being prepared under Executive Order 12291.

The RIA survey will cover the 1981 reporting year and provide a substantially improve data base on actual hazardous waste management practices and operations. This data base will be updated and improved in subsequent surveys.

The RIA survey questionnaires are considerably longer and more complex than the forms that will be used for the surveys conducted after 1982. However, they will allow the Agency to test the survey process, including the sampling design, survey procedures, and follow-up activities. Thus, EPA will be able to resolve technical problems in the survey instrument and thereby increase the reliability and utility of the data collected in future years.

E. Frequency of Surveys

Although EPA is today proposing to replace the current annual report with a survey of generators and TSD facilities conducted once every two years, the Agency is considering whether surveys to be conducted either more or less frequently would better satisfy the Agency's information needs. EPA believes that it may be possible to reduce the frequency of the surveys to once every three years without sacrificing the reliability of the information available to the Agency for regulatory decisions. This would further reduce the burden on the regulated community. The option is also available of conducting an annual survey, thereby minimizing the possibility the EPA would be acting on incomplete or out-of-date information. The Agency seeks specific public comment on the frequency of future surveys: should they be annual, biennial, triennial, or some other frequency?

F. Confidentiality of Information

Survey respondents will be able to assert claims of business confidentiality covering part or all of the information submitted to the Agency. Procedures for making such claims are set forth in 40 CFR 2.203(b). Information covered by a claim of business confidentiality will be disclosed by EPA only as permitted by Subpart B of 40 CFR Part 2 (41 FR 36902, September 8, 1978, and 44 FR 17673, March 23, 1979). If no claim of business confidentiality is asserted at the time the requested information is furnished to

the Agency, the information contained in the survey responses may be made public without prior notice.

G. Elimination of Reporting Exemptions

The existing annual reporting requirements exempt generators who treat, store, or dispose of hazardous waste on-site or who only ship hazardous waste off-site to TSD facilities that they own or operate. Since all of the information that these generators would have submitted in generator reports would also have been submitted by them in their TSD facility reports, EPA saw no reason to require such firms to file two duplicative reports.

Today's proposed amendments would remove this reporting exemption because the data to be supplied by generators and by TSD facilities are not duplicative. Generator survey forms will request data on the nature and amount of hazardous wastes generated, while TSD facility survey forms will request data on the disposition of such wastes, and the capacity for such disposition. Respondents selected as both a generator and a TSD facility would receive one combined survey form.

H. Cooperation With States

EPA intends to collect, collate and store survey data in ways that facilitate the sharing of information and information collection resources with States. After completing the RIA survey this fall, the Agency intends to make available to State governments all information obtained regarding the generation of hazardous waste and its treatment, storage, and disposal to the extent permitted under 40 CFR 2.305(h)(3) (EPA's business confidentiality regulations). States may be particularly interested in information pertaining to hazardous waste activities within their own boundaries, and within contiguous States. EPA hopes to provide such information to interested State in both raw (copies of survey forms) and compiled form.

EPA also intends to explore the potential for federal/State cooperation in the conduct of future surveys. The RIA survey will test the Agency's survey methodology using a sample population large enough to provide reliable national and regional statistics describing hazardous waste generation and its treatment, storage, and disposal. EPA envisions the possibility of entering into cooperative agreements with interested States to expand its sample size in future surveys where State-specific statistics are desired.

Under one possible approach, an interested State could provide funding for the incremental costs the Agency would incur in drawing a larger sample from that State. This approach might be attractive to States since the incremental costs of expanding the sample size would be significantly less than the costs that would be incurred if the States were to gather all of the data themselves. Furthermore, interested States also could request that EPA obtain additional data from handlers sampled in their States.

EPA, however, is limited in the extent to which it can collect information desired by the States. Since the EPA surveys will rely in part upon Section 3007 of RCRA, the Agency can only obtain information from handlers in authorized States if the information is intended for use in the development and enforcement of the RCRA regulatory program. However, where States have independent authority to require reporting, it may be possible for surveys to be developed under the joint authority of State and federal law.

EPA seeks specific public comment on the issue of federal/State cooperation in the survey process. In particular, the Agency seeks comment on the possibility of obtaining data directly from States as a means of reducing the frequency of EPA surveys.

IV. Conforming Amendments

EPA is also proposing a number of minor amendments to bring all of EPA's existing RCRA regulations into conformance with the survey proposal.

A. Annual Report Forms

The proposed amendments to 40 CFR Part 262.41 would delete the annual report forms (EPA Forms 8700-13 and 8700-13B) and their associated instructions.

The annual report forms and instructions contained in the TSD facility regulations at 40 CFR Parts 264 and 265 (EPA Forms 8700-13 and 8700-13B, contained in Appendix II to each Part) will not be deleted, however. The Agency is maintaining them in the Code of Federal Regulations since they also serve as the Unmanifested Waste Report forms (Part C of each form), required for use by facility owners and operators under 40 CFR 264.76 and 265.76. EPA intends to revise the Unmanifested Waste Report Forms, pending an analysis of their utilization by facility owners and operators. The annual report forms may be removed from the TSD facility regulations or altered as necessary upon completion of review by EPA.

B. Ground-Water Monitoring Reporting

Section 265.94 currently requires owners and operators of surface impoundments, landfills, and land treatment facilities to submit annual ground-water monitoring data and analyses as part of, or attached to, their annual reports to EPA's Regional Administrators. Since the annual reports will no longer be required of such owners and operators, EPA is proposing to have the § 265.94 ground-water monitoring data submitted independently to Regional Administrators by March 1 of each year, the date that the original annual report would have been submitted. This proposed action does not affect the nature of the data required to be submitted.

C. State Authorization

The final group of conforming amendments would revise the State program regulations in 40 CFR Part 123 in two ways. First, the amendments would reflect that EPA will be exercising its RCRA Section 3007 authority to collect information in States granted interim or final authorization. The regulations detailing the components of the Memoranda of Agreement, to be signed by such States and EPA prior to the granting of interim and final authorization, would be revised to add provisions acknowledging that EPA will be engaging in such activities.

The Agency recognizes that many of these Memoranda have already been signed. The intent of today's proposal is simply to clarify the roles of the States and EPA in the administration of the survey program. As such, EPA does not see these amendments as requiring at this time any additions to State programs already in place. Future Memoranda of Agreement will include today's proposed acknowledgement provisions, and existing Memoranda may be revised to include such provisions in the course of other changes to their provisions. The absence of such provisions will not prevent the Agency from conducting any of the activities included in today's proposed amendments.

Second, 40 CFR 123.34, 123.36, and 123.28 would be amended to provide specific guidance on how EPA will determine whether State reporting requirements implementing Sections 3002 and 3004 are equivalent or substantially equivalent to the survey requirement. The proposed amendments give the States the flexibility to conduct surveys, to continue to require annual reports, or to develop other mechanisms

to gather the necessary data concerning the generation and disposal of hazardous waste.

V. Executive Order 12291

In accordance with Executive Order 12291, EPA has determined that today's proposed revisions of the RCRA regulations will not result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, today's proposed amendments are not subject to the major rule provisions of the Executive Order and no regulatory impact analysis is required.

These proposed amendments have been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. OMB's comments, and EPA's responses will be made available for public inspection at the Office of Solid Waste Docket (see addresses, above, for location and public hours).

VI. Paperwork Reduction Act

The RIA survey forms have been approved by the office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000-0424. The forms intended for use in future surveys will be submitted to OMB for review under the PRA.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare regulatory flexibility analysis for all proposed rules to assess their impact on small entities. No regulatory analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The economic impact of this regulation will be to reduce the costs of complying with EPA's hazardous waste management regulations for generators of hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this proposed rule will not have a significant economic

impact on a substantial number of small entities.

VIII. Request for Comments

EPA seeks public comment on all aspects of these amendments and on all of the issues discussed in this preamble. In particular, the Agency is interested in the public's views concerning the frequency and scope of future surveys.

If EPA completes this rulemaking before March 1, 1983, and if, after considering all comments received on this proposal, the Agency decides to amend the annual report requirement by replacing it with a requirement for a biennial survey, it is EPA's intent to make such amendments effective immediately. The practical effect of this action would be that EPA would not collect a 1982 annual report.

Because such amendments would reduce reporting requirements for most facilities, EPA does not believe that making them effective immediately would cause undue hardship. However, the Agency seeks comment on this issue, particularly in light of requirements of Section 553 of the Administrative Procedures Act (requiring that regulations take effect no earlier than 30 days after date of promulgation) and Section 3010(b) of RCRA (requiring that revisions to RCRA Subtitle C regulations take effect six months after date of promulgation).

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Confidential business information.

40 CFR Part 123

Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

40 CFR Part 262

Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 264

Environmental Protection Agency, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Environmental Protection Agency, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: September 30, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 262—STANDARDS FOR GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 reads as follows:

Authority: Secs. 2002 (a), 3001, 3002, 3003, 3004, 3005, and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978, (42 U.S.C. 6912(a), 6921, 6922, 6923, 6924, 6925, 6927).

2. 40 CFR 262.40(b) is revised to read as follows:

§ 262.40 Recordkeeping.

* * * * *

(b) A generator must keep a copy of each Exception Report for a period of at least three years from the date of the report.

* * * * *

40 CFR 262.41 is revised to read as follows:

§ 262.41 Biennial surveys.

The Administrator shall conduct a biennial survey of a sample of the population of generators and establish a date by which the response is due. The first survey will cover the 1983 calendar year. The Administrator shall determine in each survey year the number of such generators to be surveyed and the information to be collected.

4. The Appendix to 40 CFR Part 262, entitled Appendix—Form—Annual Report (EPA Form 8700-13), and the associated section entitled General Instructions, Hazardous Waste Report (EPA Form 8700-13), are removed from the Code of Federal Regulations.

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

5. The authority citation of Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3007 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).

6. 40 CFR 264.75 is revised to read as follows:

§ 264.75 Biennial surveys.

The Administrator shall conduct a biennial survey of a sample of the population of facility owners and operators and establish a date by which the response is due. The first such survey will cover the 1983 calendar year. The Administrator shall determine in each survey year the number of such owners and operators to be surveyed and the information to be collected.

7. 40 CFR 264.77 is revised to read as follows:

§ 264.77 Additional reports.

In addition to submitting the discrepancy reports and unmanifested waste reports described in §§ 264.72 and 264.76, the owner or operator must also report to the Regional Administrator releases, fires, and explosions as specified in § 264.56(j).

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

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

Authority: Secs. 1006, 2002(a), 3004, and 3007 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).

9. 40 CFR 265.75 is revised to read as follows:

§ 265.75 Biennial surveys.

The Administrator shall conduct a biennial survey of a sample of the population of facility owners and operators. The first such survey will cover the 1983 calendar year. The Administrator shall determine in each survey year the number of such owners and operators to be surveyed and the information to be collected.

10. 40 CFR 265.77 is amended by revising the introductory text to read as follows:

§ 265.77 Additional reports.

In addition to submitting the discrepancy reports and unmanifested waste reports described in §§ 265.72 and 265.76, the owner or operator must also report to the Regional Administrator:

* * * * *

11. 40 CFR § 265.94 is amended by revising (a)(2)(ii) and (iii) and (b)(2) to read as follows:

§ 265.94 Recordkeeping and reporting.

(a) * * *

(2) * * *

(ii) Annually: 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). During the active life of the facility, this information must be submitted no later than March 1st following each reporting year.

(iii) No later than March 1st following each reporting year: 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) * * *

(2) Annually, until final closure of the facility, submit to the Regional Administrator a report containing the 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 during the reporting period. This information must be submitted no later than March 1st following each reporting year.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND INJECTION CONTROL PROGRAM

12. The authority citation for Part 122 read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300f et seq.; and Clean Water Act, 33 U.S.C. 1251 et seq.

13. 40 CFR 122.26 is amended by revising (a)(3)(v) and (c)(3)(v) and (vi) to read as follows:

§ 122.26 Permits by rule.

* * * * *

(a) * * *

(3) * * *

(v) 40 CFR § 264.75, Biennial surveys; and

* * * * *

(c) * * *

(3) * * *

(v) 40 CFR 264.75, Biennial surveys;
(vi) 40 CFR 264.76, Unmanifested waste report; and

* * * * *

14. 40 CFR 122.28 is amended by removing paragraph (e)(3).

PART 123—STATE PROGRAM REQUIREMENTS

15. The authority citation for Part 123 reads as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300 (f) et seq.; and Clean Water Act, 33 U.S.C. 1251 et seq.

16. 40 CFR 123.6 (d) is amended by adding paragraph (d)(6), to read as follows:

§ 123.6 Memorandum of Agreement with the Regional Administrator.

* * * * *

(d) * * *

(6) EPA may conduct biennial surveys of generators and facility owners and operators located in States with approved programs.

* * * * *

17. 40 CFR 123.34(b) is revised to read as follows:

§ 123.34 Requirements for generators of hazardous waste.

* * * * *

(b) The State shall have authority to require and shall require all generators to comply with recordkeeping and reporting requirements equivalent to those under 40 CFR 262.40 and 262.41. States must require that generators keep these records at least three years. Reporting requirements shall be considered equivalent to 40 CFR 262.41 if States, on a biennial basis, require the submission of information concerning the types and quantities of wastes generated and the disposition of such wastes.

* * * * *

18. 40 CFR 123.36(h) is amended to read as follows:

§ 123.36 Requirements for hazardous waste management facilities.

* * * * *

(h) Inspections, monitoring, recordkeeping, and reporting. Reporting requirements shall be considered

equivalent to 40 CFR § 264.75 if States, on a biennial basis, require the submission of information concerning the types and quantities of wastes received by hazardous waste management facilities and the disposition of such wastes;

* * * * *

19. 40 CFR 123.126 (b) is amended by adding a new paragraph (b)(8), to read as follows:

§ 123.126 Memorandum of Agreement.

* * * * *

(b) * * *

(8) A provision acknowledging that EPA may conduct surveys of generators and facility owners and operators located in States with approved programs.

* * * * *

20. 40 CFR 123.128(b)(3) is revised to read as follows:

§ 123.128 Program requirements for interim authorization for Phase I.

* * * * *

(b) * * *

(3) The State shall have the authority to require and shall require all generators covered by the State program to comply with reporting and recordkeeping requirements substantially equivalent to those found at 40 CFR 262.40 and 262.41. Reporting requirements shall be considered substantially equivalent to 40 CFR 262.41 if States, on a biennial basis, require the submission of information concerning the types and quantities of hazardous waste generated and the disposition of such wastes.

* * * * *

21. 40 CFR 123.128(e)(6) is revised to read as follows:

(e) * * *

(6) Inspection, monitoring, recordkeeping and reporting. Reporting requirements shall be considered substantially equivalent to 40 CFR § 265.75 If States, on a biennial basis, require the submission of information concerning the types and quantities of wastes received by hazardous waste management facilities and the disposition of such wastes;

* * * * *

[FR Doc. 82-27817 Filed 10-8-82; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 262, 264, and 265****[SW-FRL-2158-5]****Hazardous Waste Management System: Standards Applicable to Generators of Hazardous Waste and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities.****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice concerning compliance dates.

SUMMARY: EPA is today clarifying the status of three reporting and recordkeeping requirements under Subtitle C of the Resource Conservation and Recovery Act. These requirements concern:

(1) The submission of 1981 annual reports by hazardous waste generators and owners or operators of hazardous waste treatment, storage, and disposal (TSD) facilities;

(2) The submission of quarterly ground-water monitoring data for surface impoundments, landfills, and land treatment facilities during the initial year of ground-water monitoring; and

(3) The preparation of ground-water quality assessment program outlines for surface impoundments, landfills, and land treatment facilities.

Today's notice explains that all three requirements are now in effect.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT:

RCRA/Superfund Hotline at (800) 424-9346 (toll free), or in Washington, D.C. (202) 382-3000.

For technical information contact: Robert B. Axelrad, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-5218.

SUPPLEMENTARY INFORMATION:**I. Background**

Under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6921 *et seq.*, EPA has promulgated regulations establishing a comprehensive regulatory program for the management and control of hazardous waste (40 CFR Parts 260-267 and 122-124). As part of these regulations, generators of hazardous waste and owners or operators of hazardous waste treatment, storage, and

disposal (TSD) facilities in unauthorized states¹ are required to prepare annual reports on their hazardous waste management activities and submit them to the EPA Regional Administrator by March 1 of the following year (40 CFR 262.41, 264.75, and 265.75). Annual reports covering the 1981 reporting year were originally required to be submitted to EPA Regional Administrators by March 1, 1982.²

In addition, the regulations require owners or operators of surface impoundments, landfills, and land treatment facilities to implement a ground-water monitoring program by November 19, 1981 (40 CFR 265.90). Owners or operators are required during the initial year of their monitoring programs to conduct quarterly analyses (40 CFR 265.92(c)) to characterize, among other things, the suitability of the ground water in the uppermost aquifer as a drinking water source (40 CFR 265.92(b)(1)). Within 15 days after the completion of each quarterly analysis, owners or operators in unauthorized states are required to report to EPA Regional Administrators the concentrations or values of the observed parameters specified in Appendix III to 40 CFR Part 265 for each ground-water monitoring well (40 CFR 265.94(a)(2)(i)). Appendix III includes most of the chemical constituents in the National Interim Primary Drinking Water Regulations. As part of these reports, owners or operators must separately identify for each monitoring well any parameter whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III.

Finally, as part of the ground-water monitoring regulations, owners or operators of certain TSD facilities were required to prepare an outline of a ground-water quality assessment program by November 19, 1981 (40 CFR 265.93(a)).

On February 23, 1982, EPA postponed the compliance date for these three requirements until April 1, 1982 (47 FR 7841).

II. Purpose of This Notice

The purpose of this notice is to clarify the current status of the three reporting requirements discussed above. It is being issued in response to two developments. First, as discussed in

¹ Handlers located in states that have been authorized by EPA to operate their own hazardous waste programs must comply with state requirements in lieu of the Federal hazardous waste regulations.

² The requirement to submit an annual report covering the 1980 calendar year was permanently suspended on January 26, 1981 (46 FR 8395).

Section III.A., below, the Office of Management and Budget (OMB) has recently approved the forms for the 1981 annual report under the Paperwork Reduction Act (PRA). This notice explains the effect of OMB's action.

Second, on July 28, 1982, the Environmental Defense Fund (EDF) filed a petition with EPA requesting that the Agency "put the Annual Report and ground-water assessment outline (as well as the quarterly ground-water monitoring reports) back into effect on August 1." (Pet. at p. 7). The petition also requests that EPA advise the regulated community, through a **Federal Register** notice, of their duty to comply with each of these requirements. This notice responds to EDF's petition.

III. Current Status of Requirements**A. 1981 Annual Report Requirement**

The requirement to submit an annual report covering the 1981 calendar year took effect under RCRA on August 1. However, because OMB has not cleared the annual report form under the PRA as of August 1, it is EPA's opinion that the reports were not required to be submitted on that date. The Agency advised persons who called EPA during July to ask about the status of the report that it would not be due unless and until OMB clearance was obtained.

On September 20, 1982, EPA received OMB clearance for the report forms under the PRA (OMB clearance number 2050-0005). Accordingly, the reports must now be submitted to the Agency. EPA recognizes, however, that many persons may not have prepared such reports because they were waiting for an EPA announcement concerning OMB approval of the report forms. To provide a reasonable amount of time for EPA to print and distribute the report forms and for the regulated community to complete and submit them,³ EPA is today announcing that it will not take enforcement action against any generator or TSD facility for failure to submit the 1981 annual report if such report is mailed to the Regional Administrator for the Region where the

³ EPA has made minor modifications in the format of the annual report forms published in the **Federal Register** on May 19, 1980. At least sixty days before January 10, 1982, EPA will be mailing copies of these modified forms to generators and owners and operators of TSD facilities who have notified under Section 3010 of RCRA and are located in states or territories which had not received Phase I interim authorization as of September 20, 1982. (NY, NJ, WV, MI, OH, MN, NM, MO, CO, WY, SD, NV, HI, WA, ID, AK, DC, Guam, N. Marianas, Virgin Islands, Puerto Rico, and American Samoa). Persons may also obtain copies of the forms from the RCRA hotline, (800) 424-9346 (toll-free) or 382-3000 (in Washington, D.C.).

generator or facility is located by [insert date 90 days after date of publication].

B. Quarterly Ground-Water Monitoring Reports

As in the case of the annual report, the requirement that owners or operators of TSD facilities in unauthorized states report to EPA the results of quarterly ground-water monitoring analyses went into effect on August 1, 1982. EPA has received OMB clearance for these reports under the PRA (OMB clearance number 2000-0423). Therefore, the first two quarterly reports, originally due to be submitted to EPA Regional Administrators on March 6 and June 3, 1982, were required to be submitted on August 1, 1982, the third quarterly report was due September 3, 1982. Persons who have not yet submitted these reports should do so now. The final quarterly report is due as originally scheduled (December 4, 1982).

C. Ground-Water Quality Assessment Program Outlines

The requirement that owners or operators of certain TSD facilities prepare an outline of a ground-water quality assessment program went into effect on August 1, 1982. The assessment outline requirement has been cleared by OMB (OMB clearance number 2000-0423). Therefore, TSD facilities should now have on site an assessment program plan outline, as described in 40 CFR 265.93(a).

IV. Executive Order 12291

EPA has determined that this notice is not a "rule" or "regulation" under Section 1 of Executive Order 12291, and therefore is not required to be submitted to OMB for review under the Order. However, in keeping with the objectives of the Order, EPA has sent this notice to OMB for comment.

This document establishes compliance dates for the following sections:

§§ 262.41, 264.75, 265.75, 265.94(a)(2)(i), and 265.93(a).

List of Subjects

40 CFR Part 262

Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: September 30, 1982.

John W. Hernandez, Jr.,
Acting Administrator.

[FR Doc. 82-27818 Filed 10-8-82; 8:45 am]

BILLING CODE 6560-50-M