**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 144, 264, 265, 270, and 271**

**[SWH; FRL 3211-6]**

# Hazardous Waste; Codification Rule for the 1984 RCRA Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule..

**SUMMARY:** This rule is a companion to EPA's final rule of July 15, 1985, which codified requirements specified by the Hazardous and Solid Waste Amendments of 1984 (HSWA) that took effect immediately or shortly after enactment (see 50 FR 28702). The July 15 final rule amended EPA's hazardous waste regulations to incorporate the statutory language of HSWA into EPA's existing regulatory framework. This rule codifies further changes to the existing regulations which implement the HSWA provisions relating to corrective action and permitting for RCRA facilities. Today's rule also includes provisions to implement the statutory requirements pertaining to corrective action for releases beyond the facility boundary, and to corrective action for hazardous waste injection wells.

**DATES:** The following regulatory amendments to Title 40 of the Code of Federal Regulations become effective December 31, 1987—§§ 144.1(h), 144.31(g), 265.1(c)(2), 270.1(c) introductory text, (5) and (6), 270.4(a), 270.10(k), 270.14 (c) introductory text and (d), 270.41(a)(3), 270.60(b)(3) and the addition to Table 1 in 271.1(j).

The following regulatory amendments become effective immediately December 1, 1987—§§ 264.100(e) introductory text, (1) and (2), and 264.101(c).

**ADDRESS:** The docket for this rulemaking is available for public inspection in the sub-basement, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The docket number is F–87–CODF–FFFFF.

**FOR FURTHER INFORMATION CONTACT:** Sharon Frey, Closure/Financial Responsibility Section (WH–563), Office of Solid Waste, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; (202) 475–6725.

**SUPPLEMENTARY INFORMATION:**

## Preamble Outline



## I. Authority

These regulations are issued under authority of sections 2002, 3004, 3005, 3006, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912, 6924, 6925, 6926, and 6935.

## II. Background

The preamble to the final codification rule promulgated on July 15, 1985 (50 FR 28702) provides substantial detail on the background and purpose of today's rule, which incorporates into the existing Subtitle C regulations an additional set of requirements from the 1984 Hazardous and Solid Waste Amendments (HSWA). The preamble to the July 15, 1985 final rule should be read first to understand the context of this rule. Briefly, the July 15 rule codified, with very few changes, the statutory language of many of the new provisions of the HSWA to the existing Subtitle C regulations, with a preamble that provided EPA's legal interpretations of that language. Today's rule, by contrast, codifies changes to the Subtitle C regulations that are more than mere transpositions of those statutory provisions which took effect immediately or shortly after enactment. This rule and accompanying preamble deal with issues relating to corrective action and permit information requirements that are generally logical outgrowths of the 1984 amendments rather than requirements imposed directly by the statute.

The proposal for today's rule was published for comment on March 28, 1986 (51 FR 10706). In addition to corrective action and permit requirements, the proposed rule also contained provisions addressing land disposal restrictions and minimum technology requirements under section 3004 of RCRA. Those latter provisions will be addressed in a separate final rule.

## III. Section-by-Section Analysis

The following sections of this preamble include discussions of the major issues and explanations of EPA's rationale for promulgating the final rules.

### *A. Corrective Action Requirements*

#### 1. Permit Application Requirements

In the March 28, 1986 proposed rule, EPA proposed to amend § 270.14 by adding a new provision (paragraph d) requiring the provision of additional information in Part B applications pertaining to solid waste management units (SWMUs) at facilities seeking a RCRA permit. The proposed provision, as part of the codification of corrective action requirements under section 3004(u) of RCRA, would require owners and operators of facilities seeking permits to provide descriptive information on the SWMUs themselves and all available information pertaining to any release from the units. The proposal also gives EPA or an authorized state the authority to require the permit applicant to conduct sampling and analysis at the SWMUs to determine if more detailed analysis is necessary.

The Agency received many comments on the proposed requirement. Several commenters objected to the provision, arguing that it sets no real limitations on the amount of information which may be demanded by the permitted authority. In particular, these commenters contended that the proposed rule may compel permit applicants to conduct extensive sampling and analysis simply to determine whether a release has occurred.

The Agency, while sensitive to these concerns, is today promulgating the requirement as proposed. The Agency does not intend this rule to require extensive sampling and monitoring at every solid waste management unit at a RCRA facility seeking a permit. However, EPA believes that sampling and analytical data are often necessary as part of its preliminary assessment of releases from SWMUs (the RCRA Facility Assessment or RFA) before a permit is issued, and that it should have a mechanism to require the owner/operator to provide those data. As described in the proposed rule, EPA will conduct an RFA [1] on each facility during

[1] The RFA was previously known as the Preliminary Assessment/Site Investigation (PA/SI), but has been changed to distinguish it from the analogous CERCLA process. Similiarly, the RFI (RCRA Facility Investigation) is analogous to a RI (Remedial Investigation under CERCLA. These

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the permitting process to determine whether a release from a SWMU has or is likely to have occurred, as well as to determine what subsequent investigations may be necessary to identify and characterize the release further. When EPA conducts an RFA, it will rely first on existing information about the facility and a site visit to make this determination. Sampling is generally required only in situations where there is insufficient evidence on which to make an initial release determination. This requirement is not anticipated to place an unreasonable new resource burden on owners/operators. The actual extent of sampling will vary, however, depending on the amount and quality of existing information available.

The Agency also received a number of comments concerning certain descriptive information on SWMUs that the proposal required. One commenter objected that the proposed rule did not require a structural description of the solid waste management unit, arguing that this information is needed to determine the potential for releases of hazardous waste from the unit. Another suggested that EPA should require a hydrological study for solid waste management units as part of the permit application. A third commenter was concerned that the provision required information that may not be available for certain types of solid waste management units such as long-inoperative wood pallet or scrap metal storage areas.

As noted in the preamble to the proposed rule, the new requirements in § 270.14(d) are intended to assist the Agency in determining the existence or likelihood that there is or has been a release at a facility. Complete information on solid waste management units will enhance the Agency's ability to make these determinations; however, the Agency recognizes that for many solid waste management units, detailed information on waste characteristics and design of the units may not be available. Accordingly, the final rule states that while general information on solid waste management units (e.g., location, unit type, dimensions) is required for each unit, specification of all wastes that have been managed at the unit and information pertaining to releases from such units is required only to the extent that this information is available (with the exception of any additional data that may be required under § 270.14(d)(3)).

The Agency is generally retaining its proposed approach for the reasons stated above. EPA agrees, however, that structural descriptions of solid waste management units should be required to assist the Agency in determining the potential or likelihood that a release has occurred. The Agency recognizes that some SWMUs do not have defined engineered structures; in such cases this requirement would be satisfied by a general description. The final rule includes this requirement.

Another commenter expressed the concern that a conclusion from an RFA that no further investigation is necessary could be construed to shield owner/operators from any future responsibilities for responding to releases and implementing corrective action as necessary. The commenter further suggested that EPA should routinely require ground-water monitoring at certain types of solid waste management units, such as land treatment or disposal units, unless the facility could make a specific showing that no release has occurred or is likely to occur in the future.

The legislative history of section 3004(u) demonstrates that Congress intended to extend the requirements of section 3004(u) to releases that occur after permit issuance (see S. Rep. 98–284, 98th Cong. 1st Sess. 32 (1983)). Although the emphasis of the corrective action program is on addressing releases that are identified at the time of permit issuance, the Agency recognizes the need to detect and correct future releases from SWMU's. EPA has authority under section 3004(u) to require ground-water monitoring to detect future releases. However, the Agency currently believes it is not necessary to require routine ground-water monitoring at all SWMU's located on Subtitle C facilities. EPA is considering the need to monitor solid waste management facilities more broadly in the context of its review of the Subtitle D program for the regulation of solid waste. In the interim, the Agency intends to exercise its monitoring authority under section 3004(u) on a case-by-case basis, writing permit conditions to require monitoring (or modeling) for any media where it finds that a SWMU is likely to release hazardous constituents that pose a threat to human health and the environment. The Agency may consider factors such as the volume and concentration of the constituents, site characteristics, unit design or other factors in making this determination.

In cases where releases from a SWMU are not identified at the time of permit issuance, the owner/operator has a continuing responsibility to report and address such releases (ref. § 270.30(1)). In addition, permits for land disposal facilities will be reviewed five years after issuance, to determine whether modifications to the permit, including any new or additional corrective action requirements should be added to the permit. At the time of permit reissuance, the Agency has the opportunity to reevaluate the potential for releases at the facility, and to address them in the context of the reissued permit.

Finally, the Agency received two comments requesting clarification of specific language in this provision. One commenter noted that paragraph (d)(3) should specify that sampling and analysis information be "supplied" to the permitting agency. Another commenter requested that the phrase "hazardous waste or constituents" in paragraph (d)(2) be clarified to read "hazardous waste or hazardous constituents." The final rule adopts these clarifications.

One commenter expressed the opinion that the permit application information requirements of § 270.14(d) should not apply to units in which certain wastes identified under RCRA section 3001(b)(3)(A)(i), including fossil fuel combustion wastes, are managed. The commenter argued that such wastes are exempt from coverage under § 3004(u), and therefore should not be required to comply with information requirements promulgated pursuant to section 3004(u). To support his contention, the commenter pointed out that section 3001(b)(3)(A) provides that these specified wastes shall be "subject only to regulation under other applicable provisions of Federal or state law in lieu of Subtitle C of RCRA until at least six months after the date of the submission of the applicable study required to be conducted under subsection * * * (n) * * * of section 8002" of RCRA. The commenter thus argued that since section 3004(u) is located in Subtitle C of RCRA, its requirements do not apply to fuel combustion wastes.

This comment raises a significant issue of statutory interpretation that applies not only to wastes from fossil fuel combustion, but also to three other categories of wastes excluded under section 3001. Section 3001(b)(3), the provision quoted above, also addresses wastes from the extraction, beneficiation and processing of ores and minerals ("mining wastes"), and cement kiln dust wastes. This provision is commonly called the "Bevill amendment." In addition, section 3001(b)(2) subjects drilling fluids,

procedures are described more fully in EPA's National Corrective Action Strategy, announced in the Federal Register of October 23, 1986 (51 FR 205).

produced waters, and other wastes associated with the production of crude oil or natural gas or geothermal energy ("oil and gas wastes") to a similar limitation.

EPA does not agree that these exclusions extend to corrective action for releases from solid waste management units under section 3004(u). EPA believes that Congress enacted these provisions in 1980 to prohibit EPA from regulating these wastes as "hazardous" while it studied the impacts of such regulation. When Congress enacted these exemptions in 1980, Subtitle C provided only for the regulation of hazardous waste. Hence, the reference to "this subtitle" indicated only an intent to exclude these special wastes from EPA's hazardous waste regulations.

Section 3004(u), however, does not fit in the 1980 statutory scheme. Although it is located in Subtitle C, it provides for clean-up of releases of "hazardous constituents" (not just hazardous wastes) from both hazardous waste and solid waste management units. Indeed, section 3004(u) is the only provision in Subtitle C that reaches beyond the universe of hazardous waste. Thus, the question of statutory interpretation for the Agency is whether the exemption, which extends to regulation "under Subtitle C", should be read as covering the authorities granted to EPA to correct releases of hazardous constituents at solid waste management units.

EPA does not believe that Congress intended the exemptions in section 3001, which were clearly aimed at hazardous waste, to extend to corrective action for solid wastes under section 3004(u). Certainly nothing in the plain language of the legislative history of section 3004(u) suggests that Congress intended to create any exemptions for any category of solid waste. Furthermore, the commenter conceded that fossil fuel combustion wastes are "solid wastes" subject to corrective action regulation under Subtitle D and emergency clean-up orders under Section 7003. (See the brief of petitioner Edison Electric Institute in *United Technologies Corporation* v. *EPA*, D.C. Cir. No. 85-1654 consolidated cases.) It is more logical and consistent with Congressional goals to conclude that these solid wastes are similarly subject to clean-up requirements under section 3004(u).

An exemption from corrective action under section 3004(u) is also not necessary to achieve the goals of the original exemption in section 3001. The sponsors of the 1980 amendments were chiefly concerned with the lack of specific data showing that these solid wastes endangered human health and the environment, and the potential for disruptive economic impacts if these wastes were subject to regulation as hazardous wastes under Subtitle C. *See, e.g.*, 126 Cong. Rec. H1101-1102 (daily ed. Feb. 19, 1980) (remarks of Representative Bevill); 125 Cong. Rec. S6821 (daily ed. June 4, 1979) (remarks of Senator Huddleston). Section 3004(u), however, will not require any corrective action unless EPA obtains data showing that specific solid waste management units are releasing hazardous constituents in the manner that threatens human health and the environment. Furthermore, a decision to require clean-up under section 3004(u) will not require compliance with the full range of Subtitle C regulations. For example, the double liner retrofitting requirements in section 3005(j) would not apply to a solid waste management unit containing a Bevill waste or an oil and gas waste. Corrective action will not have the same economic impact as full Subtitle C regulation. As indicated, Congress provided for corrective action for solid wastes under Subtitle D and/or section 7003; coverage under section 3004(u) simply provides a linkage between corrective action and the hazardous waste permitting process.

In summary, EPA has concluded that "Bevill wastes" and oil and gas wastes are subject to the corrective action requirements of section 3004(u) when they are found in solid waste management units at facilities that need permits to manage hazardous wastes.

2. Corrective Action Beyond the Facility Boundary

In the March 28, 1986 proposed rule, the Agency proposed to codify section 3004(v) of HSWA by adding §§ 264.100(e) and 264.101(c) to the current regulations. This proposal required owners/operators of hazardous waste treatment, storage, and disposal facilities to institute corrective action beyond the facility boundary where necessary to protect human health and the environment, unless the owner/operator is denied access to adjacent lands despite the owner/operator's best efforts. This requirement also applies to permit-by-rule facilities required to compy with § 264.101.

In the preamble to the proposed rule, the Agency solicited comment on how "best efforts" should be defined, and what kind of documentation should be required. Several commenters questioned the need for rigid or defined rules as to what constitutes "best efforts," arguing that the circumstances surrounding individual sites vary extensively, and therefore can not be adequately addressed in a generic rulemaking. Other commenters suggested that a certified letter sent by the owner or operator requesting access to conduct corrective action should suffice to demonstrate best efforts to obtain permission from the adjacent landowner. EPA agrees with those commenters who argued the need for a flexible, case-by-case approach. In determining what constitutes "best efforts," the Agency will consider a number of factors, including the necessity of the off-site investigation, the extent and significance of the release, the contacts made between property owners, and the reasonableness of the efforts. In any case, the Agency believes that efforts to seek permission should, at a minimum, be demonstrated through a certified letter (or equivalent demonstration) from the owner/operator.

In the proposed rule, the Agency also requested comments on what kinds of corrective measures should be required on-site if permission to extend corrective action measures beyond the facility boundary is denied. Specifically, the Agency asked for comments on whether hydraulic gradient modifications or purchase of water rights should be required in these cases.

Several commenters cautioned that these alternatives may not be physically possible, legal, or effective in many cases. For example, gradient modifications may dewater neighbors' wells and streams, and water rights are not transferable in some states. In light of these considerations, the Agency agrees with those commenters who suggested that while these options may be appropriate at a particular site, they should not be an automatic requirement. Therefore, the agency will examine the feasibility and appropriateness of on-site measures on a case-by-case basis, considering site-specific hydrogeologic conditions and other relevant factors, in situations where off-site access is denied. Today's final rule has added to §§ 264.100(e)(2) and 264.101(c) to clarify that owner/operators are not relieved of responsibilities to perform on-site corrective actions if off-site access is denied.

EPA disagrees with those commenters who argued that if permission from the adjacent landowner is denied—despite the owner/operator's best efforts—the owner/operator should be relieved of all responsibility to clean up a release that has migrated beyond the facility boundary. The Agency believes that even if permission is denied, owners/operators may still not be relieved of their responsibility to undertake

corrective measures to address releases that have migrated beyond the facility boundary. In such cases, owner/operators may be required, on a case-by-case basis, to implement certain corrective measures on-site to clean up releases beyond the facility boundary if such measures are necessary to protect human health and the environment, and if they are possible, legal, and effective.

The proposed rule also clarified that assurances of financial responsibility must be provided for corrective action beyond the facility boundary. This requirement has been promulgated as proposed. One commenter objected to this provision, arguing that there is no specific requirement under section 3004(v) of HSWA that owner/operators must provide such assurances. EPA disagrees with this commenter's interpretation of sections 3004(u) and 3004(v) of HSWA. The Agency believes that Congress intended the financial assurance requirements of sections 3004(a)(6) and 3004(u) to apply to all corrective actions that are necessary to address releases from solid waste management units at a facility, regardless of whether those releases have migrated beyond the facility boundary and thus require off-site actions. Rules proposed on October 24, 1986 (51 FR 37854) address in detail requirements for financial assurance for corrective action.

3. Corrective Action for Injection Wells

The March 28, 1986 rule proposed amendments to three sections of existing regulations for underground injection wells which inject hazardous waste: 40 CFR 144.1(h), 144.31(g), and 144.56. These proposed amendments were intended to define the requirements for such wells as related to the corrective action provisions of RCRA section 3004(u). Today's final rule makes final two of the three proposed amendments: §§ 144.1(h) and 144.31(g). The following discussion provides a general outline of the Agency's overall approach to permitting of hazardous waste injection wells as related to corrective action requirements under RCRA and the Safe Drinking Water Act (SDWA). It also explains today's new regulatory amendment (§ 270.60(b)(3)(ii)), and how and why this final rulemaking differs from the proposal.

i. *SDWA and RCRA Permitting Scheme.* A hazardous waste injection well must have authorization to operate under both SDWA and RCRA. Authorization is obtained under SDWA through an Underground Injection Control (UIC) permit or an authorization by rule (see 40 CFR 144.21). RCRA authorization is obtained through interim status (40 CFR Part 265 Subpart R) or a permit-by-rule (40 CFR 270.60(b)). RCRA interim status facilities are considered to have a pending permit application, and must submit required information when it is called in by the regulatory authority. Neither RCRA nor SDWA authorization alone is sufficient to inject hazardous waste.

RCRA permits-by-rule issued after November 8, 1984 must address the corrective action requirements of RCRA section 3004(u), as codified in § 264.101 (see § 270.60(b)(3)). (The term "corrective action", in this context, is not the same as the term corrective action as used in the UIC program under 40 CFR 144.55 for plugging man-made conduits). Sections 264.101 and 270.60(b) require that a RCRA permit-by-rule issued after November 8, 1984, address corrective action for releases of hazardous waste or constituents from any solid waste management unit (SWMU) at the facility. Therefore, a RCRA permit-by-rule issued after this date must address any necessary corrective action not only for the well, but for all SWMUs at the facility.

The timing of implementation of section 3004(u) corrective action requirements at facilities with injection wells will vary, depending on the nature of the facility and its permitting status. The major categories of facilities, and the corresponding timing of implementation of section 3004(u) requirements, are discussed briefly below.

First, many injection wells with RCRA interim status are located at interim status facilities which have another unit or units that are subject to RCRA permitting (e.g., hazardous waste storage tanks). For these facilities, as for all facilities which inject hazardous waste, EPA intends to review potential releases from the injection well as part of the UIC permitting process (under SDWA authorities, and, if necessary, RCRA section 3008(h)). However, implementation of substantive requirements of section 3004(u) for the well and all SWMUs at the facility will be addressed through the first RCRA permit issued to the other hazardous waste unit(s) at the facility. Once the RCRA permit for the other unit(s) has been issued, the injection well would automatically obtain its permit-by-rule by fulfilling the corrective action requirements of § 270.60(b), provided that the other requirements of § 270.60(b) have been met.

Second, some hazardous waste injection wells are located at facilities with no other units subject to RCRA permitting. In this case, EPA will implement corrective action requirements of section 3004(u) as they apply to SWMUs on the surface concurrently with the UIC permit process. These requirements will be imposed in a RCRA "rider permit" to the UIC permit which would be issued according to RCRA permitting procedures in conjunction with issuance of the UIC permit. When the UIC and the RCRA "rider" permit have been issued, the well will have a RCRA permit-by-rule.

Third, some hazardous waste injection wells were issued UIC permits before November 8, 1984, and, therefore, are operating under a RCRA permit-by-rule rather than interim status. At the time the UIC permit is reissued, the facility must address the corrective action requirements for all SMWUs in order to renew the RCRA permit-by-rule. This will require a RCRA "rider" permit addressing section 3004(u) corrective action for all SWMUs for the wells to continue to handle hazardous waste.

Similarly, new injection wells or other wells which have never qualified for interim status and do not have a permit, will require a UIC permit and a RCRA "rider" permit addressing section 3004(u) corrective action for all SWMUs before the wells can handle hazardous waste.

ii. *Section 144.1(h).* Under previous requirements, issuance of a UIC permit essentially constituted issuance of a RCRA permit-by-rule, and, thus, provided the well's RCRA authorization. The final rule of July 15, 1985 (50 FR 28702) at § 270.60(b), however, now provides that the permit-by-rule requires 1) a UIC permit *and* 2) compliance with § 270.60(b) requirements (including corrective action). Thus, obtaining a UIC permit in and of itself is not sufficient to move a well from interim status to having a permit-by-rule. Therefore, § 144.1(h) of this final rule provides that hazardous waste injection wells now operating under RCRA interim status may retain RCRA interim status after issuance of a UIC permit. Until a RCRA permit, or a RCRA "rider" to a UIC permit, which addresses section 3004(u) corrective action is issued, the well must comply with applicable interim status requirements imposed by § 265.430, and Parts 144, 146, and 147 (and any requirement imposed in the UIC permit).

In addition to finalizing § 144.1(h), today's rule deletes § 265.1(c)(2) from existing regulations as a necessary conforming change. Section 265.1(c)(2) had provided that interim status requirements do not apply to a UIC well once its UIC permit has been issued.

This requirement is no longer appropriate since a facility must now do more than obtain a UIC permit to obtain a RCRA permit-by-rule.

Several comments were received on the § 144.1(h) regulatory amendment as proposed. One commenter expressed concern that a facility may be able to receive a UIC permit and maintain interim status in perpetuity, *i.e.*, without any specified date for conducting corrective action. EPA disagrees with this comment. In the case of injection wells without surface units subject to RCRA permitting, EPA will require a RCRA permit-by-rule to address corrective action for surface SWMUs at the same time as the UIC permit is issued. This will consolidate any necessary corrective action and avoid duplicative permit proceedings. For wells with surface units operating under interim status, corrective action for all SWMUs will be addressed when the surface unit(s) is permitted. The permitting of these units is subject to the statutory deadlines of HSWA, and therefore cannot be delayed significantly.

Furthermore, EPA believes that requiring injection wells in interim status to address corrective action for surface units at the time the UIC permit is issued would be counterproductive. One of the Agency's fundamental objectives in implementing the RCRA corrective action program is to assign highest priority to those facilities having the most serious environmental problems. If the Agency did not provide for the continuation of interim status after issuance of the UIC permit, it would be required either to (a) delay issuance of the UIC permit until RCRA corrective action for surface units could be addressed, or (b) process the corrective action portion of the RCRA permit before other facilities which may have more serious environmental problems. The Agency does not believe that either situation would effectively serve overall protection of human health and the environment. In any case, however, if EPA identifies the need for corrective action at injection wells with interim status, it will address any problems through RCRA section 3008(h) or other enforcement authorities.

iii. *Section 144.31(g).* Today's rule finalizes § 144.31(g), which requires submission of available information regarding operating history and condition of the injection well, as well as any available information on known releases from the well or injection zone as part of the UIC permit process. The submission of this information will be used to evaluate the need for further investigations or corrective action for such releases. Site investigations will be required only to the extent necessary to follow up Agency concerns which arise during an evaluation of available information on the well.

One commenter expressed concern that, as proposed, § 144.31(g)(2) could require submission of unnecessary information simply because it was "available," and suggested that "relevant" be added to qualify the statement. Another was concerned that site investigations would be required (under § 144.31(g)(3)) without evidence to support a concern about a release from a unit. Because evaluating historic releases can be difficult and the information that may be useful will follow no set pattern, EPA believes it is reasonable, and not an undue burden, for the applicant to submit whatever is available concerning corrective action. Obviously EPA only seeks information which relates to the problem, but the Agency believes that all pre-existing information should be analyzed by the regulating agency, rather than just the applicant. The intent of the amendment is to provide the Agency with the necessary information from owners/operators to support determinations as to whether more extensive investigations should be conducted to verify and fully characterize releases, and to compel corrective actions as necessary. Section 144.31(g)(2) has, therefore, been finalized unchanged from the proposal. New site investigations under § 144.31(g)(3), however, would only be required where necessary to determine whether a release has occurred. EPA believes the standard in the proposed rule is appropriate and incorporates this standard in the final rule.

iv. *Section 270.60(b)(3)(ii).* Today's rule amends the permit-by-rule regulations of § 270.60 to require UIC facility owner/operators to submit certain information related to corrective action with their UIC applications. As discussed above, in a few cases, an injection well which requires a RCRA permit-by-rule may be the only unit at the facility which requires a RCRA permit. In such cases, information on SWMUs at the facility would not be obtained through a RCRA permit application process for a surface facility. The permit-by-rule must, therefore, be the vehicle for implementing corrective action at such facilities. Since information on SWMUs at the facility is necessary to develop any required corrective action conditions in a permit, EPA is persuaded that submission of this information (specified in today's rule at § 270.14(d)) should be a requirement for obtaining a permit-by-rule for hazardous waste injection wells. Submission of this information is a step which must occur prior to the issuance of the permit-by-rule. Only after corrective action schedules are written in a RCRA rider to the permit would the well have a permit-by-rule. The preamble to the March, 1986 proposal indicated that EPA was considering amending the permit-by-rule regulations (§ 270.60) to include such a requirement. Today's rule finalizes this requirement.

v. *Section 144.56 (Deleted).* Proposed § 144.56 has been deleted from this final rule. This section would have established, within the UIC regulations, corrective action requirements to implement section 3004(u) for the injection well through UIC permits. This proposed provision would have had the effect of implementing corrective action under RCRA section 3004(u) for the injection well under one permit; and for the surface units at the facility under a different permit at a different time. Upon further consideration, EPA has decided against adopting this approach. This decision is in keeping with the language of section 3004(u) which calls for corrective action to be addressed for the entire facility at the time the RCRA permit is issued. Section 3004(u) is a permit-related authority; EPA has concerns about the availability of this authority outside the context of a RCRA facility permit. Enforcement authorities under section 3008(h) and other authorities will be used as necessary to address corrective action at interim status facilities with injection wells prior to issuance of a RCRA permit.

vi. *Comments on Applicability of Section 3004(u) to Hazardous Waste Injection Wells.* Several commenters on the proposed rule suggested that section 3004(u) authority should not apply at all to facilities subject to permit-by-rule requirements. The Agency reaffirms its position, stated in the final codification rule issued on July 15, 1985 (50 FR 28712), that it sees no legal basis for departing from a literal reading of the statute, which appears to encompass *any* section 3005(c) permit within its mandate. Permits issued under section 3005(c) include those for any facility conducting or planning to conduct treatment, storage, or disposal of hazardous wastes. None of these comments argue that Class I wells are outside the bounds of the activities described; they argue that, because the units are seeking permits under the UIC program in 40 CFR Part 144, they are not seeking a permit under section 3005(c) of RCRA. Hazardous waste injection wells

seeking UIC permits are simultaneously seeking RCRA permits.

RCRA, as well as EPA regulations (40 CFR 270.1(c) (2) and (3)), contain exemptions to the section 3005(c) permitting requirements for specific types of facilities treating, storing, or disposing of hazardous waste. For example, section 3005(f) of RCRA specifically exempts facilities with coal mining wastes and reclamation permits from coverage by regulations promulgated under Subtitle C. Such a specific exclusion indicates that Congress consider which, if any, holders of other permits should be exempt from permitting under section 3005(c). Injection wells, however, are not specifically exempted by Congress, and, in fact, are specifically included as requiring a RCRA permit under 40 CFR 270.1(c)(1). The permit-by-rule was established to acknowledge that the standards already established under the Safe Drinking Water Act would constitute acceptable standards for RCRA section 3005(c).

One commenter suggested that EPA's proposed regulation regarding standards for managing recycled used oil (50 FR 49212, November 29, 1985) is inconsistent with the Agency position that corrective action applies to facilities subject to a RCRA permit-by-rule. However, the situation of recycled oil facilities differs significantly from that of UIC wells operating under a permit-by-rule. Section 3004(u) clearly states that corrective action must be addressed in permits issued under section 3005, which includes permits-by-rule for injection wells. The preamble to the proposed recycled used oil rule indicated that standards promulgated under section 3004(u) would not apply to certain recycled oil facilities. This is because recycled oil facilities are subject to permitting requirements under section 3014(d), rather than under section 3005(c). Therefore, the corrective action requirements of section 3004(u) do not apply. Further, the recycled oil proposal should not be considered a statement of final Agency policy; in a **Federal Register** notice at 51 FR 41903 (November 19, 1986), the Agency indicated that the used oil facility standards require further study before being finalized. The limited situation described in that proposal is not analogous to a facility with Class I underground injection wells which inject hazardous waste.

vii. *Comments on Migration Within Injection Zone.* Two commenters expressed concern that corrective-action requirements for releases which migrate beyond the facility boundary, proposed in § 144.56(c), should not apply to wastes in the injection zone (a geological formation which may extend underground beyond the property boundary established on the surface). EPA has already stated in the preamble to the final codification rule issued on July 15, 1985 (see 50 FR 28712) that emplacement of liquids into an injection zone through a well does not constitute a *release* from a solid waste management unit, but rather is migration within a unit. Since RCRA corrective action requirements only apply to *releases* of hazardous waste or hazardous constituents from solid waste management units, the requirements do not apply to the wastes within an injection zone as described in the comments.

*B. Permits*

1. Permit Modifications

Section 270.41(a)(3) allows permits to be modified because of amended standards or regulations only if the permittee requests such modification. In the March 28, 1986 proposed rule, the Agency proposed to expand this provision in light of the recent statutory amendments to section 3005(c) of RCRA. This amendment allows EPA to initiate modifications to a permit without first receiving a request from the permittee, in cases where statutory changes or new or amended regulatory standards affect the basis of the permit.

Several commenters objected to the proposed rule on the grounds that it was unnecessary or would place permitted facilities in jeopardy of permit changes and would interfere with long-term planning. Some commenters suggested that EPA not initiate permit modifications except according to the schedule for the five-year or ten-year permit renewal. The Agency considered these comments but is promulgating this section as proposed. In order to minimize threats to human health and the environment, the Agency considers it important—and consistent with Congressional intent—to have the regulatory authority to modify RCRA permits when statutory changes or new regulations affect the standards on which the permits were based. Moreover, EPA does not believe that this requirement will unduly restrict planning efforts at RCRA facilities. Permit holders will be protected through standard rulemaking procedures against arbitrary or unnecessary changes, as well as by procedural protections built into the permit modification process. EPA does not intend to use this authority for minor procedural changes in regulatory requirements; rather, it is intended for significant amendments which may provide a substantial increase in protection of human health or the environment at a particular site.

The Agency also disagrees with those commenters who suggested that, to avoid potential abuse, EPA should codify specific conditions and criteria for reopening permits under this provision. The Agency believes that it would be unnecessarily time- and resource-consuming to issue specific guidance, criteria, or rules for its use. EPA will use this authority where it is necessary to protect human health and the environment, and does not believe that it should be limited to statutory provisions intended to have immediate effect, as one commenter suggested.

In a related activity, EPA has recently completed regulatory negotiations on RCRA permit modification with representatives of industry, States, and public interest groups, and will be issuing a proposed rule based on the results of these negotiations. While EPA's proposal on permit modifications may substantially alter modification procedures, it will retain the principle that EPA or an authorized State may initiate modification procedures in cases where permit conditions are inconsistent with new statutory or regulatory requirements.

2. Permit as a Shield

The March 28, 1986 proposed rule sought to amend the "permit as a shield" provision (§ 270.4(a)) to clarify that permittees must comply with new requirements that are imposed by statute and with the land disposal regulations promulgated in 40 CFR Part 268.

Several comments on this proposed amendment addressed the question of how new requirements would actually be imposed on the permittee; that is, whether or not permits would have to be modified, and whether or not authorized States would have to have adopted these requirements, for the requirements to be enforceable. EPA emphasizes that these requirements are self-implementing and they are effective—and enforceable—at RCRA facilities regardless of whether or not the facility's permit has specific conditions that require compliance, or, for changes imposed by HSWA, an authorized State has formally incorporated these requirements into its regulations (RCRA section 3006(g)). In fact, it is the responsibility of the owner/operator to comply with these requirements, even where there are contrary permit conditions (e.g., after certain specified dates, a land disposal facility is not

allowed to accept and dispose of a restricted waste, unless it has met the required treatment standard, regardless of the conditions stated in the facility's permit).

Because the statutory and regulatory requirements described in § 270.4(a) are effective regardless of permit conditions, EPA is not required to reopen existing permits to incorporate them and generally will not do so. However, permits issued after the effective date of a regulatory or statutory change would generally cite these requirements, so that their applicability would be clear both to the permittee and the public.

3. Permit Conditions as Necessary to Protect Human Health and the Environment

The March 28, 1986 proposed rule sought to amend the existing general permit application requirements under § 270.10 by adding a new paragraph (k) establishing the Administrator's authority to require information from permit applicants concerning permit conditions necessary to protect human health and the environment. The Agency previously codified the HSWA provision which allowed EPA to establish permit conditions necessary to protect human health and the environment in § 270.32(b) (section 3005(c)).

A number of commenters argued that EPA's "omnibus" authority under section 3005(c) should be limited to special or unique circumstances different from those addressed in the regulations (such as the permitting of hazardous waste disposal/storage in underground mines), or to additional permit conditions which are "absolutely necessary" and intended to be incorporated in all similar facility permits. The Agency does not agree with these interpretations. The language of section 3005(c) as amended by HSWA gives the Agency broad authority to impose permit conditions necessary to protect human health and the environment, and does not contain the limitations suggested by the commenters. As noted in the preamble to the July 15, 1985 final rule, the Agency believes the Congressional intent underlying this provision includes authorization to impose permit conditions beyond those mandated by the regulations. Thus, in specific circumstances where regulatory requirements may be inadequate, the Agency believes that the use of 3005(c) authority is not limited either to unique cases or to "absolutely necessary" conditions affecting all similar facilities.

EPA agrees with those commenters who stated that the authority to require submittal of information to support permit conditions that are imposed under the authority of § 270.32(b) should be used sparingly, and not for random and unjustified "fishing expeditions," or for conditions unrelated to hazardous waste activities. The Agency intends to use this requirement only where necessary to protect human health and the environment, and only to address specific environmental circumstances that are not adequately covered in existing regulations. Therefore, § 270.10(k) is finalized as proposed.

4. Post-closure Permits

*i. Applicability and Effective Date*

Section 3005(i) of RCRA requires that all landfills, surface impoundments, waste piles and land treatment units which received hazardous wastes after July 26, 1982, comply with the same groundwater monitoring, unsaturated zone monitoring, and corrective action requirements that apply to new units. To implement this requirement, EPA proposed an amendment to § 270.1(c) that would require post-closure permits for all land disposal units receiving hazardous wastes after that date. This proposed amendment was intended to establish consistency between the Part 264 groundwater protection requirements and the requirement to obtain post-closure permits. Previously, post-closure permits were required for land disposal units which closed after January 26, 1983, while new section 3005(i) imposed Part 264 Subpart F requirements on any land disposal unit which received wastes after July 26, 1982.

The Agency received numerous comments on this proposal. Several commenters supported the proposal, whereas others questioned EPA's basic authority to required post-closure permits for RCRA facilities in general, and specifically for surface impoundments which closed by removal under interim status. The commenters cited the language of § 270.1(c), which requires post-closure permits for units which are subject to post-closure care requirements of § 264.117. The commenters argued that impoundments which closed under interim status would not be required to receive post-closure permits, since they are not subject to § 264.117. EPD does not agree with the commenters who argue that EPA does not have authority to require RCRA permits for facilities during a "post-closure" period. See 47 FR 32291, 32292, 32336 (July 26, 1982). Furthermore, EPA has always intended that land disposal units that received waste after the effective date of Part 264 regulations must obtain permits and meet Part 264 requirements, even if they close under interim status (see 47 FR 32336 (July 26, 1982)). In additional, new section 3005(i) makes compliance with certain Part 264 rules a statutory requirement. Section 3005(i) subjects interim status regulated units to those ground-water monitoring, unsaturated zone monitoring and corrective action requirements which are applicable to new permitted units. Therefore, since a permitted unit would be required to meet permit conditions providing for post-closure care if closure by removal failed to meet the standard of § 264.228, interim status units must be treated in the same manner. EPA thus rejects the commenters' contention that post-closure permits cannot be required for units which closed under interim status. In today's final rule, the proposal to amend § 270.1(c) by eliminating the reference to § 264.117 has been adopted. This clarifies that units which close by removal under interim status rules are subject to post-closure requirements.

Several commenters argued that requiring post-closure permits for land disposal units that received wastes after July 26, 1982 increases the permit burden on the Agency and industry unnecessarily. Alternatives to the proposed post-closure permit requirement were suggested, including (1) amending Part 264 Subpart F so that it would apply only when a release is indicated by Part 265 monitoring, and (2) relying solely on the interim status closure and post-closure requirements of Part 265 to provide the requisite groundwater protection measures. Section 3005(i) prohibits both alternatives, since it requires units to meet the Part 264 standards. Furthermore, the Agency is persuaded that the groundwater protection standards of Part 264 provide a more environmentally protective mechanism for addressing goundwater protection at closed facilities than would be obtained through interim status closure and post-closure requirements.

Several commenters argued that the proposed rule would create a "loophole" in the applicability of post-closure permits. The proposal, in tying applicability of post-closure permits to the receipt of waste after July 26, 1982, would not have required post-closure permits for units which stopped receiving wastes prior to that date, but which did not complete closure until after January 26, 1983. Thus, some units which previously were subject to the post-closure permits requirement (i.e., that closed after 1/26/83), would be released from such requirements under the proposal. EPA agrees that such a loophole is not desirable. Therefore,

today's final rule differs from the proposed revision to § 270.1(c) by requiring post-closure permits for any landfill, surface impoundment, waste pile, or land treatment unit which received waste after July 26, 1982, *or* which closed after January 26, 1983. The term "closure" in this context has been clarified to mean certification of closure according to § 265.115. An exception to this post-closure permit requirement would be in the case of units which close by removal or decontamination according to the requirements of Part 264 (i.e., §§ 264.228, 264.258, 264.280(e): See following discussion).

ii. *Closure by Removal.* The preamble to the proposed rule also discussed how the proposal will affect regulated units which close by removal according to Part 265. The preamble acknowledged that permitted surface impoundments, waste piles, and land-treatment units need not conduct post-closure care under a post-closure permit if they satisfy the requirements for closure by removal or decontamination in §§ 264.228 (for surface impoundments), 264.258 (for waste piles), or 264.280(e) (for land treatment units). However, the interim status units that closed by removal under Part 265 standards as written prior to the recent promulgation of conforming changes to the Part 265 closure standards, may not meet Part 264 standards for closure by removal. Such units would retain post-closure responsibilities, including the requirement to obtain post-closure permits. The recent conforming changes rule made the interim status standards for closure by removal for surface impoundments equivalent to the permitting standards for surface impoundment closures. See 52 FR 8704 (March 19, 1987).

The preamble to the March 28, 1986 proposal requested comment on whether all facilities that closed by removal under Part 265 be considered subject to post-closure permitting requirements, or whether EPA should allow facilities to demonstrate that they complied with Part 264 closure standards, and thus do not require post-closure permits. A number of commenters supported the idea of a equivalency demonstration which would serve to establish whether a closed unit met the Part 264 standards, and which would be implemented through a process which EPA would define. One commenter suggested that EPA or the state should base the determination of equivalency on a review of the closure plan and its implementation. Another commenter supported the idea of using the post-closure permit application process to gather necessary information on which to base a determination of equivalency. Several commenters opposed an alternative to the post-closure permitting process for making such determinations, since they believed it would involve less public participation, lacked a corrective action "trigger," and would not assure that Part 264 standards were met.

After considering these comments, EPA has decided to use the Part B permit application process as the primary mechanism for collecting the information to allow a determination to be made as to whether a regulated unit which closed by removal or decontamination did so in compliance with the corresponding requirements of Part 264. The Part B application process is a well-established system for reviewing the types of groundwater, soil and other sampling and analytical data that will typically be required in determining the "equivalency" of interim status closure. However, the Agency has decided that an owner-operator should be allowed to demonstrate that a unit has been closed in accordance with the Part 264 closure by removal or decontamination standards, without having to submit a full Part B application for a post-closure permit. Therefore, the Agency is establishing a mechanism in today's rulemaking to allow such "equivalency demonstrations" to be made outside the Part B permit process.

As provided by § 270.1(c)(5)(ii) (promulgated today) an owner/operator may request the Regional Administrator to determine whether a post-cloture permit is required for a surface impoundment, waste pile or land treatment unit that closed according to Part 265 closure standards. These requests may be submitted at any time at the discretion of the owner/operator, including when EPA calls in the Part B post-closure permit application. If the owner or operator has not previously submitted a Part B permit application, he must provide sufficient information, including data on contaminant levels in soil and ground water, to demonstrate that the applicable Part 264 standards for closure by removal or decontamination have been met.

The Agency will review the information to determine whether the "equivalency" of the closure has been successfully demonstrated. If EPA determines that the interm status closure has met the appropriate Part 264 closure standard, a full Part B permit application will not be required to be submitted, nor will a post-closure permit be issued. The Agency will give public notice of such determinations and provide the opportunity for public comment using a procedure that parallels the closure plan approval procedures outlined in § 265.112(d)(4). If EPA determines that the closure does not meet the Part 264 standards, the owner/operator will be required to submit a Part B permit application containing all the applicable information in accordance with Part 270, and EPA will issue a post-closure permit. EPA anticipates that the number of "non-equivalent" interim status closures will decrease as the new conforming changes rule takes effect. This determination process will apply primarily to closures completed under the previous interim status rules.

It should be understood that the process of demonstrating equivalency of closure will not affect the due date of a Part B application once it has been requested. If a petition is submitted after a Part B has been requested, it may be difficult for the Agency, given the time required to review the data and process the petition, to make a determination well in advance of the Part B due date. This could create difficulties, especially when a petition is rejected, allowing little time for the owner/operator to prepare a Part B by the specified due date. The Agency therefore urges owners/operators who intend to submit equivalency demonstrations to do so before the facility's Part B is requested.

One commenter on the proposed rule raised concerns regarding facilities which are able to successfully demonstrate "equivalency" for a closed unit, and which thereby may not be required to obtain a post-closure permit for the facility. Specifically, the commenter noted that the absence of a permitting requirement would relieve the owner/operator of the responsibility for complying with section 3004(u) corrective requirements. The commenter further argued that, although such facilities will be subject to section 3008(h) interim status corrective action order authority, this enforcement authority is an "inadequate substitute" for section 3004(u) is obtaining corrective action.

EPA does not agree that the section 3008(h) authority is inadequate as a means of addressing necessary corrective action at facilities with units that have successfully demonstrated equivalent closure by removal. Section 3008(h) is substantially identical to section 3004(u) in terms of the type and scope of cleanup actions which can be required of facility owner/operators. Although procedurally the two authorities differ, and the enforcement authority is discretionary in the sense

that it is not automatically triggered upon issuance of a permit, it is the Agency's view that section 3008(h) can and will be used effectively to address necessary corrective action requirements at facilities which will not require post-closure permits due to "equivalent" closure.

## IV. State Authority

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

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to issue permits. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements are applied by EPA in authorized States in the interim.

Today's rule is promulgated pursuant to RCRA sections 3004(u), 3004(v) and 3005(i). These provisions were added by HSWA. Therefore, the Agency is adding the requirement to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

### *B. Effect on State Authorizations*

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see § 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline for State program modifications for this rule is July 1, 1989 (or July 1, 1990 if a state statutory change is needed). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations beings promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The process and schedule for final State authorization applications is described in 40 CFR 271.3.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. However, none of the standards promulgated today are considered to be less stringent than or to reduce the scope of the existing Federal requirements.

## V. Effective Dates

EPA believes it has a sound basis for suspending the statutory six-month effective date (RCRA section 3010(b)) for certain provisions promulgated today. HSWA amended section 3010(b) to provide that EPA may shorten or provide for an immediate effective date where (1) the regulated community does not need six months to come into compliance, (2) the regulation responds to an emergency situation, or (3) there is other good cause. Sections 144.1(h) and 265.1(c)(2) (which is deleted by this rule) are not new requirements but merely clarify that a UIC well may obtain a UIC permit under Part 144 but still maintain RCRA interim status. The sections outlining information necessary for corrective action permit decisions (§ 144.31(g), 270.14 (c) and (d), and 270.60(b)(3)(ii)) are necessary to process what is already a statutory requirement. In most cases the authority to request the information already exists. For other provisions of today's rulemaking relating to corrective action and permitting requirements, EPA believes that the regulated community does not need six months to come into compliance with these regulations. Therefore, §§ 265.1(c)(2), 270.1(c), 270.4(a) 270.10(k), 270.14 (c) and (d), 270.41(a)(3), 270.60(b)(3)(ii) and 271.1(j) will become effective in thirty days, as required by the Administrative Procedures Act, 5 U.S.C. 553(d).

In addition regulations pertaining to corrective action beyond the facility boundary (§§ 264.100(e) and 264.101(c)), implementing section 3004(v) of RCRA, will become effective on the date of promulgation. Section 3004(v) requires the Agency to amend its regulatory standards to address corrective actions beyond the facility boundary and states that these amendments "shall take effect immediately upon promulgation, notwithstanding section 3010(b) * * *."

## VI. Regulatory Analyses

*A. Regulatory Impact Analysis*

Executive Order No. 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule.

This rule establishes several information requirements, and merely codifies corrective action requirements for releases migrating beyond the property boundary. It does not however, establish the specific levels that facilities must meet in taking corrective actions. The Agency intends to specify these levels in a proposed rule being developed under section 3004(u) of RCRA, along with a complete assessment of the costs, impacts and benefits.

The regulatory impact analysis for today's rule, therefore, only addressed the costs associated with new information requirements. These information requirements alone do not impose costs that would make it a major rulemaking as defined by Executive Order No. 12291. This regulation is thus not considered to be a major rule.

A complete assessment of the impacts of the section 3004 (u) and (v) corrective action requirements which EPA anticipates to be major, will be addressed in the RIA that is now being prepared as part of the section 3004(u) regulations. The RIA will accompany the section 3004(u) rule when it is proposed.

This final rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, at the time an agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis which describes the impact of the rule on small businesses and organizations, unless the Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Agency has examined the final rule's potential impacts on small business and has concluded that this regulation will not have a signficant impact on a substantial number of small entities. In a cost analysis accompanying the March 28, 1986 proposal, EPA compared potential costs of compliance to its 1982 implementation criteria for a Regulatory Flexibility Analysis. Under the most stringent regulatory scenario, neither costs nor impacts of the proposed rule met the criteria for significant impact. Therefore, this final rule does not require a Regulatory Flexibility Analysis.

Accordingly, I hereby certify that this proposed rule will not have a significant impact on a substantial number of small entities.

*C. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in the proposed or final rule.

The information collection requirements in this final rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1980 and were assigned OMB Control Nos. 2050–0009, 2050–0002, and 2050–0007.

**List of Subjects**

*40 CFR Part 144*

Administrative practice and procedure, Confidential business information, Hazardous waste, Indian lands, Reporting and record-keeping requirements, Surety bonds, Water supply.

*40 CFR Part 264*

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

*40 CFR Part 265*

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

*40 CFR Part 270*

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

*49 CFR Part 271*

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

Dated: November 16, 1987.

**Lee M. Thomas,**

*Administrator.*

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

## PART 144—REQUIREMENTS FOR THE UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 is revised to read as follows:

**Authority:** 42 U.S.C. 300(f) et seq.; and 42 U.S.C. 6901 et seq.

2. In § 144.1, paragraph (h) is added to read as follows:

**§ 144.1 Purpose and scope of Part 144.**

* * * * *

(h) *Interim Status Under RCRA for Class I Hazardous Waste Injection Wells.* The minimum national standards which define acceptable injection of hazardous waste during the period of interim status under RCRA are set out in the applicable provisions of this Part, Parts 146 and 147, and § 265.430 of this chapter. The issuance of a UIC permit does not automatically terminate RCRA interim status. A Class I well's interim status does, however, automatically terminate upon issuance to that well of a RCRA permit, or upon the well's receiving a RCRA permit-by-rule under § 270.60(b) of this chapter. Thus, until a Class I well injecting hazardous waste receives a RCRA permit or RCRA permit-by-rule, the well's interim status requirements are the applicable requirements imposed pursuant to this Part and Parts 146, 147, and 265 of this chapter, including any requirements imposed in the UIC permit.

3. In § 144.31, paragraph (g) is revised to read as follows:

**§ 144.31 Application for a permit; authorization by permit.**

* * * * *

(g) *Information Requirements for Class I Hazardous Waste Injection Wells Permits.* (1) The following information is required for each active Class I hazardous waste injection well at a facility seeking a UIC permit:

(i) Dates well was operated.

(ii) Specification of all wastes which have been injected in the well, if available.

(2) The owner or operator of any facility containing one or more active hazardous waste injection wells must submit all available information pertaining to any release of hazardous waste or constituents from any active hazardous waste injection well at the facility.

(3) The owner or operator of any facility containing one or more active Class I hazardous waste injection wells must conduct such preliminary site investigations as are necessary to determine whether a release is occurring, has occurred, or is likely to have occurred.

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

4. The authority citation for Part 264 is revised to read as follows:

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

5. Section 264.100 is amended by redesignating paragraph (e) (1) and (2) as (e) (3) and (4), by adding new paragraphs (e) (1) and (2), and by revising the introductory text of paragraph (e) to read as follows:

**§ 264.100 Corrective action program.**

* * * * *

(e) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under § 264.93 that exceed concentration limits under § 264.94 in groundwater:

(1) Between the compliance point under § 264.95 and the downgradient property boundary; and

(2) Beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis.

* * * * *

6. In § 264.101, paragraph (c) is added to read as follows:

**§ 264.101 Corrective action for solid waste management units.**

* * * * *

(c) The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided.

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

7. The authority citation for Part 265 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

**§ 265.1 [Amended].**

8. In § 265.1 paragraph (c)(2) is removed and reserved.

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

9. The authority citation for Part 270 is revised to read as follows:

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

10. In § 270.1, the introductory text of paragraph (c) is revised and paragraphs (c)(5) and (c)(6) are added to read as follows:

**§ 270.1 Purpose and scope of these regulations.**

* * * * *

(c) *Scope of the RCRA Permit Requirement.* RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in 40 CFR Part 261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to § 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under § 270.1(c) (5) and (6). If a post-closure permit is required, the permit must address applicable Part 264 Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of this chapter.

* * * * *

(5) *Closure by removal.* Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Part 265 standards must obtain a post-closure permit unless they can demonstrate to the Regional Administrator that the closure met the standards for closure by removal or decontamination in § 264.228, § 264.280(e), or § 264.258, respectively. The demonstration may be made in the following ways:

(i) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that section 264 closure by removal standards were met. If the Regional Administrator believes that § 264 standards were met, he/she will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (c)(6) of this section.

(ii) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Regional Administrator for a determination that a post-closure permit is not required because the closure met the applicable Part 264 closure standards.

(A) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under State requirements that met or exceeded the applicable 264 closure-by-removal standard.

(B) The Regional Administrator shall approve or deny the petition according to the procedures outlined in paragraph (c)(6) of this section.

(6) *Procedures for closure equivalency determination.* (i) If a facility owner/operator seeks an equivalency demonstration under § 270.1(c)(5), the Regional Administrator will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Regional Administrator will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Part 265 closure to a Part 264 closure. The Regional Administrator will give public notice of the hearing at least 30 days before it

occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(ii) The Regional Administrator will determine whether the Part 265 closure met 264 closure by removal or decontamination requirements within 90 days of its receipt. If the Regional Administrator finds that the closure did not meet the applicable Part 264 standards, he/she will provide the owner/operator with a written statement of the reasons why the closure failed to meet Part 264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Regional Administrator will review any additional information submitted and make a final determination within 60 days.

(iii) If the Regional Administrator determines that the facility did not close in accordance with Part 264 closure by removal standards, the facility is subject to post-closure permitting requirements.

11. In § 270.4, paragraph (a) is revised to read as follows:

**§ 270.4 Effect of a permit.**

(a) Compliance with an RCRA permit during its term constitutes compliance for purpose of enforcement, with Subtitle C of RCRA except for those requirements not included in the permit which become effective by statute, or which are promulgated under Part 268 of this chapter restricting the placement of hazardous wastes in or on the land.

* * * * *

12. In § 270.10, paragraph (k) is added and an OMB number is added at the end of the section to read as follows:

**§ 270.10 General application requirements.**

* * * * *

(k) The Director may require a permittee or an applicant to submit information in order to establish permit conditions under §§ 270.32(b)(2) and 270.50(d) of this chapter.

(Approved by the Office of Management and Budget under control numbers 2050–0009, 2050–0002, and 2050–0007)

13. In § 270.14, the introductory text of paragraph (c) is revised, paragraph (d) is added and an OMB number is added at the end of the section to read as follows:

**§ 270.14 Contents of Part B: General requirements.**

* * * * *

(c) *Additional information requirements.* The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in § 264.90(b) of this chapter:

* * * * *

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(i) The location of the unit on the topographic map required under paragraph (b)(19) of this section.

(ii) Designation of type of unit.

(iii) General dimensions and structural description (supply any available drawings).

(iv) When the unit was operated.

(v) Specification of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, landsurface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Director ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

(Approved by the Office of Management and Budget under control numbers 2050–0009, 2050–0002, and 2050–0007)

14. In § 270.41, paragraph (a)(3) is revised to read as follows:

**§ 270.41 Major modification or revocation and reissuance of permits.**

* * * * *

(a) * * *

(3) *New statutory requirements or regulations.* The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause as follows:

(i) Director may modify the permit when the standards or regulations on which the permit was based have been changed by statute or amended standards or regulations.

(ii) Permittee may request modification when:

(A) The permit condition to be modified was based on a promulgated regulation under Parts 124 of this chapter, Parts 260—268 of this chapter, or Part 270 of this chapter; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; or

(C) A permittee requests modification in accordance with § 124.5 of this chapter within 90 days after **Federal Register** notice of the action on which the request is based.

(iii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA-promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based or if a request is filed by the permittee in accordance with § 124.5 of this chapter within 90 days of judicial remand.

* * * * *

15. In § 270.60, paragraph (b)(3) is revised and an OMB number is added at the end of the section to read as follows:

**§ 270.60 Permits by rule.**

* * * * *

(b) * * *

(3) For UIC permits issued after November 8, 1984:

(i) Complies with 40 CFR 264.101; and

(ii) Where the UIC well is the only unit at a facility which requires a RCRA permit, complies with 40 CFR 270.14(d).

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0007)

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

16. The authority citation for Part 271 is revised to read as follows:

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

17. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

**§ 271.1 Purpose and scope**

* * * * *

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

| Promulgation date | Title of regulation | Federal Register | Effective date |
|---|---|---|---|
| [*insert date of publication*]. | Codification Rule for the 1984 RCRA Amendments. | [insert *FR* reference]. | [*insert thirty days after publication.* |

* * * * *

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