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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270, and 271

[FRL–5100–2]

RIN 2050–AD55

Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement Authority

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the regulations under the Resource Conservation and Recovery Act (RCRA) in two areas. First, the Agency is proposing to remove the current requirement for a post-closure permit, and allow the Agency to use alternative authorities to address facilities with units requiring post-closure care. In addition, the Agency is proposing to amend the regulations governing State authorization to require authorized States to adopt, as part of an adequate enforcement program, authority to address corrective action at interim status facilities. This action also solicits comment on several issues related to closure and corrective action at hazardous waste management facilities.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: Environmental Protection Agency, RCRA Docket (OS–305), 401 M St., SW., Washington, DC 20460. Commentors should send one original and two copies and place the docket number (F–94–PCPP–FFFFF) on the comments. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday except for Federal holidays. Docket materials may be reviewed by appointment by calling 202–260–9327 A maximum of 100 pages of material may be copied at no cost from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline (1–800–424–9346) toll free, or (202–260–9327) in Washington, D.C. (for technical information); Barbara Foster (703–308–7057), Office of Solid Waste, Mail Code 5303W U.S. Environmental Protection Agency, Washington D.C. 20460 (issues related to closure or post-closure care), or Ellen Kandell (703–603–8996), Office of Enforcement and Compliance Assurance, Mail Code 5502G, U.S. Environmental Protection Agency Washington, DC 20460 (enforcement-related issues).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are proposed under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Proposed Provisions Related to Closure and Post-Closure Requirements

A. Background Information

1. Overview of RCRA Permit Requirements

Section 3004 of the Resource Conservation Recovery Act (RCRA) requires the Administrator of EPA to develop regulations applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities, as necessary to protect human health and the environment. Section 3005 requires the EPA Administrator to promulgate regulations requiring each person owning or operating a treatment, storage, or disposal facility to have a permit, and to establish requirements for permit applications. Recognizing that the Agency would require a period of time to issue permits to all facilities, Congress provided, under section 3005(e) of RCRA, that qualifying owners and operators could obtain "interim status" and be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of continuing hazardous waste management operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued numerous regulations to implement RCRA requirements for hazardous waste management facilities. These regulations include the standards of 40 CFR part 264 (which apply to facilities that have been issued RCRA

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permits), part 265 (which apply to interim status facilities), and part 270 (which provide standards for permit issuance). The general requirements for closure are found at 40 CFR parts 264 and 265, subpart G.

2. The Closure Process

The closure regulations at 40 CFR parts 264 and 265, subpart G require owners and operators of hazardous waste management units to close these units in a manner that is protective of human health and the environment and that minimizes the post-closure release of hazardous constituents to the environment. These regulations also establish procedures for closure: they require owners and operators to submit closure plans to the Agency for their hazardous waste management units, and they require Agency approval of those closure plans.

In addition, parts 264 and 265 establish specific requirements for closure of different types of units. Under parts 264 and 265, subpart L, owners and operators of landfills are required to cover the unit with an impermeable cap designed to prevent infiltration of liquid into the unit; then owners or operators must conduct post-closure care (including maintenance of the cap and groundwater monitoring). Owners and operators of surface impoundments and waste piles have the option either to remove or decontaminate all hazardous waste and constituents from the unit, or to leave waste in place, cover the unit with an impermeable cap, and conduct post-closure care. Closure of land treatment facilities must be conducted in accordance with closure and post-closure care procedures of §§ 264.280 and 265.280. As part of the closure plan approval process, the Agency has the authority to require owners and operators to remove some or all of the waste from any type of unit at the time of closure, if doing so is necessary for the closure to meet the performance standard of § 264.111 or § 265.111.

Owners and operators of incinerators and storage and treatment units (e.g., tanks and containers) are required to remove or decontaminate all soils, structures, and equipment at closure. Owners and operators of tanks who are unable to do so must close the unit as a landfill and conduct post-closure care.

3. Post-Closure Care

As discussed above, owners and operators of hazardous waste management units that close with waste in place must conduct post-closure care at those units, including groundwater monitoring and maintenance of the cap. EPA's current regulations anticipate that these requirements, for the most part, will be imposed through RCRA permits. Under 40 CFR 270.1, permits are required for the post-closure period for any landfill, waste pile, surface impoundment, or land treatment unit that received waste after July 26, 1982, or ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983. In addition, § 270.1(c)(5) requires owners and operators of surface impoundments, land treatment units, and waste piles that closed by removal or decontamination under former part 265 standards to obtain a post-closure permit unless they demonstrate that the closure met the current standards for closure by removal or decontamination.

In the case of operating land disposal facilities, the RCRA permit, when first issued, incorporates the closure plan and applicable post-closure provisions. These post-closure conditions become effective after the facility ceases to manage hazardous waste and the closure plan has been implemented. The permit, when issued, also requires compliance with part 264 subpart F groundwater monitoring standards, and (if the permit was issued after November, 1984) it would include terms implementing the facility-wide corrective action requirements of RCRA section 3004(u). Like the post-closure care provisions, these requirements remain in effect after closure of the hazardous waste management unit.

For interim status facilities that close without having obtained an operating permit, the post-closure permit (typically issued after completion of closure) performs a critical regulatory function. First, in securing a permit, the facility must meet the permit application requirements of part 270, which require extensive information on the hydrogeologic characteristics of the site and extent of any groundwater contamination. Second, once the post-closure permit has been issued, the facility then becomes subject to the standards of part 264 rather than part 265, most significantly to the site-specific groundwater monitoring requirements of part 264, subpart F Third, the post-closure permit imposes facility-wide corrective action to satisfy the requirements of section 3004(u). Finally, the public involvement procedures of the permitting process assure that the public is informed of and has an opportunity to comment on permit conditions.

4. Developments Since 1982

Though EPA has amended the 1982 subpart G regulations on several occasions, the basic closure process and the requirement for a post-closure permit remain in place. Several significant developments since 1982, however, suggest that the closure process and standards should be revisited.

a. *The agency has gained experience in the area of closure and post-closure.* In 1982, when the regulatory structure for closure was established, the Agency had no experience with closure of RCRA regulated units. Since 1982, the Agency and authorized States have approved thousands of closure plans, and overseen the closure activities taking place under those plans. It has become evident that closure of these units is frequently more complex than EPA envisioned in 1982. In many cases, particularly with unlined land-based units, the unit has released hazardous waste and constituents into the surrounding soils and groundwater. In these cases, the closure activity is not simply a matter of capping a unit, or removing waste from the unit, but instead may require a significant undertaking to clean up contaminated soil and groundwater. The procedures established in the closure regulations were not designed to address these types of activities.

For example, it has become evident that the two options for closure provided in the current regulations (i.e., remove or decontaminate all waste from the unit, or cover the entire unit with an impermeable cap) do not provide the best remedy in all situations. In fact, the requirement that an impermeable cap be placed on the unit if all waste has not been removed may, if read narrowly, discourage implementation of more protective remedies. This issue is discussed later in this preamble.

In addition to gaining experience in the closure process, EPA and the States have issued more than 150 post-closure permits since 1982. In the course of reviewing post-closure permit applications, however, the EPA Regions and States have encountered many facilities where post-closure permit issuance proved difficult or, in some cases, impossible. Generally, the Regions and States have found two major difficulties in post-closure permit issuance. The first is that, in many cases, the facility chose to close, or was forced to close, because it could not comply with part 265 standards—particularly groundwater monitoring and financial assurance. If a facility cannot meet these requirements, EPA cannot issue a permit to it because section 3005(c) of RCRA requires facilities to be in compliance with applicable requirements at the time of permit issuance. The second difficulty

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is that the owner or operator often has little incentive to seek a post-closure permit. Without a strong incentive on the part of the facility owner or operator to provide a complete application, the permitting process can be significantly protracted. These difficulties are discussed further in section IV.A. of this preamble.

b. *The agency has acquired new corrective action authority.* In 1984, the Hazardous and Solid Waste Amendments (HSWA) to RCRA provided EPA with broad new authorities, under sections 3004(u), 3004(v), and 3008(h), to compel corrective action (i.e., cleanup) of facilities subject to regulation under RCRA Subtitle C. Corrective action has since become a major component of the RCRA Subtitle C program. Approximately 1100 hazardous waste management facilities are now in the process of implementing corrective action requirements specified under orders or permits.

The RCRA corrective action authorities, and the process that has been developed for implementing these authorities, require owners and operators to investigate the nature and extent of releases of hazardous waste or hazardous constituents at RCRA facilities (i.e., to soils, groundwater, and other environmental media). Owners and operators are required to investigate releases from solid waste management units at the facility, including releases from "regulated units" not addressed under subpart F of part 264. At the direction of the Agency, owners and operators are also required to characterize the sources of releases (i.e., the units from which wastes or constituents have been released), and to develop options for remediation of the facility. Remediation will typically address cleanup of the media contaminated by releases, and removal or containment of the source.

In practice, the corrective action process is highly site-specific, and involves direct oversight by the reviewing Agency. The process provides considerable flexibility to the Agency to tailor investigations, and to decide on remedies that reflect the conditions and the complexities of each facility. The process of investigating and achieving cleanup goals at facilities is often technically complex, and can take many years to complete. This is the case particularly for groundwater contamination in complex hydrogeologic conditions. Given the site-specific nature of corrective action, the technical challenges involved, and the large number of RCRA facilities that may require cleanup, EPA is pursuing an implementation strategy for the corrective action program that involves assessing the environmental priority of each facility from the standpoint of its need for corrective action, and focusing the program's resources on high priority facilities. This implementation strategy is discussed in more detail below.

c. *The agency has developed a strategy for addressing worst sites first under RCRA.* In 1990, EPA conducted the RCRA Implementation Study (RIS). This was the Agency's first comprehensive, in-depth evaluation of the RCRA hazardous waste program, its evolution, and its future. EPA produced the RIS after extensive discussion with stakeholders, private and public, in the RCRA program (i.e., industry, environmental groups, States, and the Agency). The RIS set forth a series of detailed recommendations regarding how to best ensure effective implementation of the RCRA program. An underlying theme throughout was the need to identify sound, environmentally-based implementation priorities in each area of the RCRA program and to demonstrate that those priorities are being effectively and efficiently addressed. The RIS advocated the use of strategic planning to define expectations and make choices among competing priorities.

In response to the RIS recommendations, EPA has developed and is implementing a comprehensive strategy for addressing the RCRA treatment, storage, and disposal universe. At the heart of this strategy is the principle that EPA and the authorized States should address the universe of hazardous waste management facilities on the basis of environmental priorities. Further, at any given site, EPA or the State should use whatever regulatory authority is best suited to achieving environmental success. One essential element of this strategy is a system to prioritize facilities based upon their risk. This allows the Agency to address the RCRA universe on a "worst-site-first" basis. Another is providing the regulator flexibility in choosing regulatory options to address a given problem, rather than focusing on the number of particular regulatory actions taken.

This approach is consistent with the Agency's response to recent recommendations from the General Accounting Office (GAO). In two recently issued reports, GAO evaluated EPA's progress in implementing the RCRA closure and post-closure program at land disposal facilities. In the first report, entitled *Progress in Closing and Cleaning Up Hazardous Waste Facilities*, issued in May of 1991, GAO criticized the Agency's progress in closing land disposal facilities that lost interim status in 1985. The report cited limited progress in this area as a basis for its concern that the Agency was placing too little emphasis on closing land disposal facilities, even though these facilities may pose some of the greatest environmental threats. In April of 1992, GAO issued another report entitled *Impediments Delay Timely Closing and Cleanup of Facilities.* This report criticized the Agency's progress in issuing post-closure permits and cited facility non-compliance with groundwater monitoring requirements as a result of permitting delays. In both of these reports, GAO recommended that EPA devote more of its time and resources specifically to addressing closed and closing land disposal facilities.

The Agency agrees with GAO's concerns about addressing risk at closed and closing land disposal facilities, but believes that those risks must be addressed within the context of the Agency's overall strategy for implementing the RCRA program. The Agency has, for several years, been carrying out a combined closure and corrective action strategy that relies on all of EPA's authorities to address environmental issues at all RCRA facilities on a worst-site-first basis. The foundation of this strategy is the Agency's system for ranking RCRA facilities based on environmental priority. This system was developed to enable EPA to focus its resources on deterring violations and remediating contamination at RCRA facilities that present the highest priority for risk reduction and prevention. (It should be noted that, because of their nature, closed and closing land disposal facilities often rank as high priority.) EPA's priority-based approach dictates that resource commitments be made based on the priority ranking of facilities. This strategy acknowledges that activities to address risk at high priority facilities may take precedence over procedural activities (e.g., permitting) at lower priority facilities. EPA believes that this priority-based approach to RCRA implementation provides the best use of available resources by ensuring progress at high priority facilities across the RCRA universe, including closed and closing land disposal facilities.

5. Response to Post-1982 Developments

In light of the developments discussed above, the Agency is reviewing the current closure and post-closure regulations. EPA's goals are to make the closure process more realistic,

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integrate the closure and corrective action processes, and provide greater flexibility in addressing risks at closed sites. Today's notice is the first step in that direction. It sets out several amendments to the closure regulations, including a new approach to addressing post-closure needs at facilities currently subject to post-closure permit requirements.

In addition to the regulatory changes in today's proposal, section IV of this preamble solicits comment on further changes to the closure process. After reviewing public comment submitted in response to today's notice, the Agency will consider proposing further revisions to the closure process.

6. State Involvement in Development of This Proposed Rule

Under the terms of Executive Order 12875, the Federal Government is urged to establish regular and meaningful consultation and collaboration with State, local, and tribal governments on Federal matters that significantly or uniquely affect their communities.

Because this proposed rule would affect State RCRA programs, we provided the rule to the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to obtain their reaction. Seven States submitted written comments and nine States participated in a conference call with EPA on April 7 1994, to discuss States' concerns. The States' written comments and a summary of the April 7 conference call can be found in the docket for this proposed rule.

The States supported the proposal to remove the post-closure permit requirement. The States strongly supported removing the distinction between closing regulated units and solid waste management units, which is discussed in section III.B. of this preamble.

Generally, States supported the inclusion of a corrective action order authority as part of an adequate enforcement program. Concerns were expressed that the Agency's review procedure of such order authorities would be duplicative of efforts undertaken during a State's authorization of HSWA corrective action at permitted facilities. The Agency recognizes that in some cases States' corrective action enforcement authorities may indeed, have been reviewed by EPA during the authorization process for section 3004(u) authority, and determined to meet the requirements of this proposal. Where EPA determines this is the case, this proposed rule would not require States to submit additional information; in addition, EPA would minimize its review.

B. Summary and Discussion of Proposed Provisions

Today's notice proposes a new approach to addressing post-closure environmental needs at facilities that have not received an operating permit, and that have units requiring post-closure care. It proposes to modify the post-closure permit requirement to allow the Agency either to issue a permit to address post-closure care at a facility, or to impose the same substantive requirements at the facility using alternative legal authorities (e.g., a post-closure plan to address the regulated unit, and an enforcement action to address the solid waste management units at the facility).

Today's proposal reaffirms that post-closure care requirements apply to all landfills, waste piles, surface impoundments, and land treatment units that received waste after July 26, 1982, or that ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983. Under current regulations at § 270.1(c), all facilities subject to post-closure care requirements must obtain RCRA permits. Today's proposal is intended to allow EPA or an authorized State to use any other available legal authority as an alternative to the post-closure permit, as long as that authority provides the same level of protection and public participation as does the post-closure permit.

As discussed above, under the current regulations, facilities that cease operation without obtaining a permit are required to close and conduct post-closure care under the self-implementing standards of Part 265 until the Agency issues a post-closure permit to the facility. This proposed rule would not modify those interim status standards applicable to closed and closing land disposal facilities. Thus, for example, those facilities would continue to be required to conduct closure under approved closure plans, conduct post-closure care under an approved post-closure plan, and obtain financial assurance.

As a result of this proposal, rather than issue a post-closure permit to impose requirements beyond the self-implementing interim status standards, the Agency could use a variety of regulatory authorities. To ensure that the authority chosen by the Agency will provide the same level of environmental protection, this proposal specifically requires owners and operators to comply with the same regulatory requirements that would be imposed through a post-closure permit when those requirements are imposed by the Agency, regardless of the regulatory authority selected. Those requirements include the requirements of Part 264, Subpart F facility-wide corrective action, and public involvement at the time of remedy selection (if corrective action is required).

The Agency is proposing to remove the permit requirement and allow the use of other authorities at post-closure facilities because it has concluded that a permit is not always the best authority for addressing environmental risk at these facilities. In fact, as was mentioned earlier, in the course of issuing post-closure permits over the past several years, EPA and the States have encountered many facilities at which post-closure permit issuance was difficult or, in some cases, impossible. Several obstacles to post-closure permit issuance have been identified.

One obstacle is a lack of incentive on the part of post-closure permit applicants. Unlike facility owners or operators seeking operating permits, owners or operators of closed or closing facilities often have little incentive to obtain post-closure permits, particularly where the post-closure unit is the only unit at the facility. While permit denial is a significant threat to a facility owner seeking an operating permit, it makes little difference to the owner of a facility that is already closed and that no longer actively manages hazardous waste. In the past, where the owner or operator has been uncooperative in obtaining a post-closure permit, the Agency and authorized States have taken enforcement actions to facilitate the permit issuance process, and to bring facilities into compliance with the applicable regulatory requirements so that a permit could be issued. Today's rule would allow the Agency to bring an uncooperative facility into compliance with the regulations through an enforcement action, and relieve the Agency of its obligation to force the facility through the permit application process, which was generally designed under the assumption that the permit applicant desired a permit. Under the proposal, while the Agency would not lose its authority to issue a post-closure permit at the facility by taking action under an alternative authority (e.g., an enforcement action), it would no longer be required to do so if all applicable regulatory requirements have been imposed at the facility

The financial status of the facility owner or operator is often another obstacle. Closed and closing land disposal facilities subject to post-closure permit requirements are in many cases

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businesses that are no longer operating and may be in poor financial condition, or they may be without significant resources. In fact, many facilities currently in the closure universe were forced to close because they could not meet the RCRA financial assurance requirements. Yet meeting these requirements is a precondition for receiving an RCRA permit, regardless of whether it is an operating permit or a post-closure permit. Where an owner or operator is financially unable to meet the threshold post-closure financial requirements for permit issuance, the current regulations do not allow EPA to issue a post-closure permit—despite the regulatory requirement that these facilities obtain such a permit.

Similarly some closing facilities are located in areas where it is difficult to satisfy the Part 264, Subpart F and Part 270 groundwater monitoring standards. For example, in some areas of complex hydrogeology it may be technically impractical for a facility to install an adequate groundwater monitoring system. The regulatory agency would deny a permit application from an operating facility in such a situation, because denial prevents further receipt of waste and forces the facility to close. Denial of a post-closure permit application from a closed facility however, is meaningless in such a situation, because it would have no effect on management of wastes already disposed of at the site and would leave any environmental problems there unaddressed.

To address environmental risk at facilities such as those described above, Regions and States have frequently utilized legal authorities other than permits. Use of enforcement actions enables the Agency to place these facilities on a schedule of compliance for meeting financial assurance and/or groundwater monitoring requirements over a period of time. And, even where enforcement actions cannot bring about full regulatory compliance (e.g., where the owner or operator cannot secure financial assurance), they will enable the Agency to prescribe actions to address the most significant environmental risks at the facility For example, EPA has often issued corrective action orders under the authority of section 3008(h) to address releases from solid waste management units at these facilities. In other cases, Federal or State Superfund authorities have been used to address cleanup at sites. However, under the current regulations, EPA or the State is still required to issue a post-closure permit even where the environmental risks associated with the facility have been addressed through other authorities.

EPA believes that this proposed rule, by allowing the use of alternative authorities will enable the Agency more effectively to address post-closure care at a significant number of uncooperative and financially burdened facilities. The Agency recognizes, however, that today's proposal may have little practical effect on the Agency's ability to address those facilities that are in too precarious a financial state to meet even an extended schedule of compliance for financial assurance or groundwater monitoring. It is important to note, however, that EPA's prioritization strategy considers the financial status of facilities and elevates in importance those whose financial condition indicates that timely action will increase the likelihood that owners or operators will be able to meet their post-closure obligations. And, in some cases, where the owner or operator's financial condition prevents it from fulfilling its obligations under RCRA, the facility may be referred to Superfund.

EPA believes that more flexible use of the full range of available authorities will provide a more comprehensive approach to ensuring effective post-closure care at RCRA facilities. This approach will enable the Agency to address facilities on a worst-site-first basis using the regulatory or legal authority that is most effective at a given site. Examples of when an authority other than a post-closure permit may be most appropriately applied include cases where the owner or operator is financially incapable of meeting the threshold requirements for permit issuance, such as compliance with the financial assurance requirements, or where the owner or operator may be uncooperative and an enforcement action is necessary.

On the other hand, a post-closure permit will generally be the preferable mechanism for cooperative facilities capable of meeting financial assurance requirements. It has been the experience of several EPA Regions and States that many facility owners or operators will cooperate in the development of a post-closure permit, while they would oppose the same conditions in an enforcement order. Additionally permit issuance may be advantageous in some situations because it enables the Regional Administrator or State Director to invoke the omnibus authority of section 3005(c)(3) of RCRA at facilities with special environmental needs that are outside the scope of the current regulations. In these cases, post-closure permits would continue to provide the best means of addressing the needs of the facility.

EPA has always interpreted sections 3004(a) and 3005 of RCRA to authorize—but not compel—the issuance of permits to implement post-closure care requirements at facilities that have ceased operating. As EPA explained when it first established the post-closure permit requirement, it "could have issued regulations that are enforceable independent of a permit to impose many of the requirements that apply to a facility after closure *" (47 FR 32366, July 26, 1982). EPA, however, believed that permits would be the most effective enforcement vehicle, primarily because they facilitate the development of site-specific conditions tailored to individual waste management facilities. *Id.* The U.S. Court of Appeals for the District of Columbia Circuit has also ruled that the statute authorizes, but does not require, post-closure permits. (*See In re Consolidated Land Disposal Regulation Litigation*, 938 F2d 1386, 1388–89 (D.C. Cir. 1991)).

Today's proposed amendments would eliminate the regulatory requirement that EPA issue permits to all facilities subject to post-closure care requirements. This proposal, EPA has concluded, not only makes policy sense but is fully consistent with the statute, because the post-closure permit requirement is a regulatory rather than a statutory construct.

Although EPA is proposing to allow alternatives to post-closure permits, today's proposed regulations ensure that all substantive conditions currently imposed through post-closure permits are imposed at all facilities subject to post-closure care requirements, regardless of which regulatory or legal authority is used. This proposal specifies that the Agency must impose at these facilities, through enforceable legal authorities, the requirements of part 264, subpart F and facility-wide corrective action. In addition, this proposal would require that the owner or operator provide to the Agency the same information required by the permit issuance process. It would also maintain the requirement for facility-wide corrective action, and it would require public involvement at the time of remedy selection, if corrective action were necessary or when the Agency determines that corrective action is not required at the facility

These provisions would ensure that all the substantive requirements of a post-closure permit would be imposed when an alternative mechanism was used. In combination with requirements already imposed on interim status

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facilities through the part 265 interim status standards, these minimum requirements would ensure that all aspects of post-closure care are fully addressed.

C. Section-By-Section Analysis

Today's proposal would modify several provisions of the RCRA regulations in both the permit issuance procedures of part 270, as well as the requirements for interim status facilities of part 265. Each modification is described in detail below.

1. Section 270.1(c)—Use of Alternative Legal Authorities to Address Post-Closure Care

EPA is proposing two amendments to § 270.1(c). First, the Agency is proposing to revise § 270.1(c) to provide an alternative to the requirement that post-closure permits be issued to closed landfills, waste piles, surface impoundments, and land treatment units, where post-closure care and corrective action are imposed through an enforceable alternative authority. Second, EPA is proposing a new § 270.1(c)(7), which allows the EPA Regional Administrator (or an authorized State) to use alternate authorities to impose post-closure care requirements in lieu of a permit. Under this section, the Agency would be required to impose on post-closure facilities subject to alternative authorities the basic requirements imposed through post-closure permits. (These requirements are specified in proposed § 265.121, described below.) However, the Agency would have the discretion to impose those conditions through a permit, a RCRA enforcement authority a Superfund authority, or a combination of these or other legal authorities. Similarly, an authorized State could impose conditions under a State cleanup authority. What is essential, in EPA's view is that facilities meet the substantive standards currently imposed through post-closure permits, not that a specific regulatory authority be used to impose these standards.

2. Section 265.121—Interim Status Post-Closure Care Requirements for Facilities Subject to Section 270.1(c)(7)

The current regulations at §§ 265.117 through 265.120 govern post-closure care at interim status regulated units that close and conduct post-closure care without obtaining a permit. Under today's proposal, regulated units would continue to be subject to the requirements of part 265 for post-closure care, including the requirement to obtain a post-closure plan. Following the post-closure care period, the regulated units would remain in interim status until and unless interim status were terminated by the Agency through one of the available means (e.g., final permit determination).

However, the current interim status post-closure care requirements are in some respects less stringent than post-closure permit requirements, specifically, the groundwater requirements of part 264, the facility-wide corrective action requirements, and the public involvement procedures associated with permit issuance. Therefore, to assure that facilities that do not obtain a post-closure permit are subject to the same requirements as those that do, today's proposal would add a new § 265.121. That section, which would be applicable to those facilities subject to the requirements of § 270.1(c)(7) that close and conduct post-closure care without obtaining a permit, would require that those facilities meet the same substantive requirements as permitted facilities must meet before the Regional Administrator can consider the post-closure needs at the facility to be addressed. Those requirements are described below.

a. *Part 264 subpart F ground-water monitoring and corrective action program (sections 264.90–264.100).* Currently the post-closure permit imposes part 264, subpart F requirements at closed land disposal units. Today's proposal would require that post-closure enforcement actions or other mechanisms used as alternatives to post-closure permits include conditions imposing part 264, subpart F standards on closed and closing land disposal units. Part 265 groundwater monitoring requirements for interim status land disposal units are less comprehensive than those established under the part 264, subpart F standards for permitted facilities. Whereas part 265 sets minimum standards for the installation of detection monitoring wells (e.g., one upgradient and three downgradient wells), part 264 establishes broader standards for establishing a more comprehensive monitoring system to ensure early detection of any releases of hazardous constituents. The specific details of the system are worked out through the permitting process. Consequently, compliance with part 264 standards usually results in a more extensive network of monitoring wells. Similarly, part 265 specifies a limited set of indicator parameters that must be monitored, while part 264 establishes a more comprehensive approach under which the owner or operator is required to design a monitoring program around site-specific indicator parameters. As a result, monitoring systems designed in accordance with part 264 standards are specifically tailored to the constituents of concern at each individual site. Additionally part 264 compliance monitoring standards are more comprehensive than part 265 standards both in terms of monitoring frequency and the range of constituents that must be monitored. Finally, the part 264, subpart F regulations provide for corrective action for releases to groundwater whereas part 265 does not.

In light of these differences, the Agency is proposing that all units subject to post-closure care requirements be required to meet part 264, subpart F standards. This approach is designed to ensure equivalent protection of human health and the environment at all facilities, regardless of which legal authority used to address post-closure care.

b. *Facility-wide corrective action.* Under section 3004(u) of RCRA, which was added to the statute as part of the 1984 Hazardous and Solid Waste Amendments (HSWA), hazardous waste permits issued after November 8, 1984, must include provisions requiring the facility owner or operator to take corrective action to address releases of hazardous waste or hazardous constituents from solid waste management units (SWMUs) at the facility. Section 3004(v) of HSWA extends corrective action authority to cover releases migrating off-site; section 3008(h) provides EPA enforcement authority to require corrective action at interim status facilities.

EPA has codified corrective action requirements at 40 CFR 264.101 and currently implements these requirements through the permitting process; at the same time, the Agency has made extensive use of the section 3008(h) authority to impose corrective action at interim status facilities. In addition, to facilitate the process, EPA proposed more extensive corrective action regulations in July 1990, under a new part 264, subpart S, and recently finalized several sections of that proposal related to temporary units and corrective action management units (*see* 58 FR 8658, February 16, 1993). The subpart S proposal set forth EPA's interpretation of the statutory requirements at that time.

EPA recognizes that corrective action requirements are a central aspect of the HSWA amendments and that the post-closure permit currently provides the primary means of ensuring that corrective action will be adequately addressed at RCRA land disposal facilities that close without first

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receiving an operating permit. In allowing alternatives to the post-closure permit, EPA has no intention of undercutting or limiting its corrective action authority or the scope of the corrective action program. Consistent with this principle, today's proposal would require that authorities used at post-closure facilities as an alternative to post-closure permits impose corrective action requirements consistent with the statute and § 264.101 of the regulations, as described in this preamble.

Today's proposal would not specify the authorities that EPA or a State could use to impose corrective action as an alternative to a post-closure permit—only that the authority must be consistent with RCRA corrective action requirements. Certainly, RCRA section 3008(h) orders would be appropriate, but EPA does not believe it makes sense to limit alternative authorities to this section. For example, many States (including States not yet authorized for section 3004 (u) and (v) corrective action authority), have their own cleanup or State Superfund authorities that are consistent with RCRA corrective action authority. EPA believes that actions under these authorities should be allowed as alternatives to post-closure permits, as long as they are consistent with RCRA corrective action requirements. Similarly, if a facility is being addressed under a federal Superfund action, and the action addresses all releases at the site, issuance of a post-closure permit should be unnecessary.

In requiring facility-wide corrective action consistent with RCRA section 3004 (u) and (v) provisions, EPA does not intend to require that alternative authorities use procedures identical to those in EPA's Subpart S proposal. For example, compliance with the NCP procedures for remedy selection would satisfy these proposed requirements. EPA wishes to emphasize, however, that to be considered consistent, an alternative approach to corrective action at a facility would have to include facility-wide assessments, and it would have to address possible releases (including off-site releases) from all solid waste management units within the facility boundary. Anything less than that, in EPA's view would not meet the basic requirements of RCRA sections 3004 (u) and (v). EPA believes that this proposed approach is appropriate because it provides reasonable flexibility for regulatory agencies using available authorities to address environmental problems at RCRA sites. At the same time, however, the Agency requests comment on this approach and suggestions for alternatives.

c. *Public participation.* Section 7004 of RCRA requires public participation in the permit issuance process. EPA has codified this requirement and has established specific public participation procedures for RCRA permitting at 40 CFR part 124. In the case of post-closure permits, these procedures assure that the public has access to information gathered by the Agency about the facility, and has an opportunity to review the Agency's decisions related to the regulated unit and to facility-wide corrective action. In addition, EPA's permit regulations in part 270 typically require a permit modification—with public participation—at the time a corrective action remedy is selected, if section 3004(u) corrective action is required as part of a facility's permit.

In developing today's proposal, the Agency sought to assure that by allowing alternative post-closure mechanisms, the Agency would provide adequate, mandatory public participation in the post-closure and corrective action processes. EPA believes that the current interim status procedures for closure and post-closure plan approval and modification (§§ 265.112 and 265.118) provide for acceptable public participation. While the procedures for plan approval are not identical to those used in permit issuance, they do require public notice and provide an opportunity for written public comment; they also include an opportunity for a hearing.[1] In EPA's view these requirements ensure a reasonable opportunity for public participation in decisions that affect long-term care of the regulated unit.

At the same time, EPA acknowledges that the public currently has no absolute assurance that it will have an opportunity to participate in the corrective action process when corrective action is imposed through an enforcement order. EPA's enforcement programs have retained discretion to limit public participation when circumstances require it. However, where orders will operate in lieu of permits (which always require public participation), EPA is proposing to limit this discretion and require a minimum level of public participation for all facilities, except in rare cases as described below.

In proposing to make public participation mandatory EPA notes that many cleanup authorities, including the federal Superfund authority and a number of State cleanup programs, already provide for significant levels of public participation in the majority of cases. In the case of CERCLA actions, procedures for public participation at point of remedy selection are established in § 300.430(f) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In addition, the CERCLA Community Relations Program guidance ("Community Relations in Superfund, A Handout") provides for extensive involvement of the public in Superfund actions. This guidance sets forth a community relations plan designed to promote two-way communication between the public and the lead Agency. In the case of corrective action imposed through RCRA enforcement orders, EPA has issued guidance announcing its policy to provide opportunity for public involvement at the time of remedy selection (*see* "RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comment," issued on April 29, 1991, which is available in the docket for this rulemaking).

Today's proposal would establish, at § 265.121(b), minimum requirements for public involvement in the remedy selection process. These requirements would apply to both regulated units and solid waste management units subject to the requirements of § 270.1(c)(7), at which closure and/or corrective action is imposed through an alternative authority, in lieu of a post-closure permit. Section 265.121(b) would require, at the point of remedy selection, public involvement that includes, at a minimum, the following procedures: Public notification of the proposed remedy through a major newspaper; opportunity for public comment (at least 30 days); opportunity for a public meeting; availability of a transcript of the public meeting; availability of written summary of significant comments and information submitted and the EPA or State response; and, if the remedy is significantly revised during the public participation process, a written summary of significant changes or opportunity to comment on a revised remedy selection.

In developing the proposed minimum requirements for public involvement under an alternate mechanism, the Agency intends to provide States and

[1] The specific differences between public participation in permit issuance and post-closure plan approval are: permits allow a 45-day public comment period, plans allow 30 days; opportunity to comment must be noticed in local newspapers and through radio spots for permits, but only in newspapers for plans; the Regional Administrator is required to hold a public hearing if asked in the case of permits, but a hearing on a plan is held at the Regional Administrators discretion; and permit decisions are subject to Agency appeal procedures, while approved plans are not. Both, however, may be challenged in the courts.

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Regions the opportunity to continue to use public participation procedures established under existing authorities, provided that they meet the requirements in § 265.121(b). Most Federal and State statutes and regulations already require that affected communities be informed about and involved in decisions regarding response to hazardous releases. In developing today's proposal, the Agency wished to avoid imposing new requirements that would force EPA and States to amend existing public participation procedures in order to use an alternate mechanism in lieu of a permit.

The Agency believes that today's proposal establishes minimum requirements necessary for adequate public involvement that are, at the same time, likely to be met by most public involvement procedures for remedy selection. For example, compliance with either the permit issuance procedures of part 124 or the NCP procedures for remedy selection would satisfy these proposed requirements. Similarly use of public participation procedures imposed under other Federal and State authorities would also be allowed, if those procedures met the minimum criteria set forth under § 265.121(b) of today's proposal. The Agency solicits comment on the requirements for public involvement at remedy selection proposed today. Specifically, the Agency solicits comment on State or Federal authorities with public involvement requirements that would not satisfy today's proposed rule, and on the adequacy of today's proposed minimum requirements.

While today's proposed rule would require public participation at the point of remedy selection for facilities subject to § 270.1(c)(7), the Agency recognizes that there may be cases where emergency remedial actions may be needed to address immediate threats. Therefore, while today's proposal would ensure a minimum 30-day public comment period for corrective action remedies imposed under an alternative mechanism in most cases, EPA is proposing to allow reduction or elimination of the public comment period if the Regional Administrator determines that even a short delay in the implementation of the remedy would adversely impact human health or the environment. The Agency anticipates that this discretionary authority will be invoked only in rare circumstances. Where the Agency finds it is necessary to implement the remedy prior to the public comment period, § 265.121(b) of today's proposal would require the Regional Administrator to solicit public comment on the remedy before making a determination that the facility's corrective action needs have been addressed in full.

As an alternative to providing an exemption to the public involvement procedures for section 3008(h), as described above, EPA solicits comment on whether to rely on RCRA, CERCLA, and State imminent and substantial endangerment authorities where immediate action is necessary.

Also, the Agency recognizes that corrective action at some facilities subject to § 270.1(c)(7) may have been implemented through a non-permit authority prior to the effective date of today's proposal. In these cases, § 265.121(c) would require the Regional Administrator to evaluate whether the remedy satisfies the requirements of this rule before considering the facility addressed. This process is discussed in more detail in section II.C.4. of this preamble.

d. *Section 270.27 information requirements.* RCRA permitting regulations do not distinguish between information requirements for operating permits and post-closure permits. Facilities seeking post-closure permits must generally provide EPA, as part of their Part B permit applications, the facility-level information required in § 270.14 as well as relevant unit-specific information required in §§ 270.16, 270.17 270.18, 270.20, and 270.21. EPA needs this information to ensure compliance with part 264 requirements during operation and throughout the post-closure care period. Information required under § 270.14 includes such areas as general inspection schedules, floodplain information, the post-closure plan, the notice of deed or appropriate alternate instrument, closure and post-closure care cost estimates, site characterization and groundwater monitoring for land disposal facilities, and exposure information for landfills and surface impoundments.

The Agency has found that certain of the 270 information requirements are essential to ensuring proper post-closure while others are generally less relevant to post-closure. The most important information for setting long-term post-closure conditions are groundwater characterization and monitoring data, long-term care of the regulated unit and monitoring systems (e.g., inspections and systems maintenance), and information on SWMUs and possible releases. Therefore, EPA is today proposing to add a new section (§ 270.27) to identify that subset of the Part B application information that must be submitted for post-closure permits. Under today's proposal, an owner or operator seeking a post-closure permit would have to submit only that information specifically required for such permits under newly added § 270.27 unless otherwise specified by the Regional Administrator. The specific items required in post-closure permit applications are:

—A general description of the facility·
—A description of security procedures and equipment;
—A copy of the general inspection schedule;
—Justification for any request for waiver of preparedness and prevention requirements;
—Facility location information;
—A copy of the post-closure plan;
—Documentation that required post-closure notices have been filed;
—The post-closure cost estimate for the facility·
—Proof of financial assurance;
—A topographic map; and
—Information regarding protection of groundwater (e.g., monitoring data, groundwater monitoring system design, site characterization information)
—Information regarding solid waste management units at the facility.

In many cases, this information will be sufficient for the permitting agency to develop a draft permit. However, since RCRA permits are site-dependent, EPA believes it is important that the Regional Administrator have the ability to specify additional information needs on a case-by-case basis. Accordingly, to ensure availability of any information needed to address post-closure care at surface impoundments (§ 270.17), waste piles (§ 270.18), land treatment facilities (§ 270.20) and landfills (§ 270.21), § 270.27 of today's proposal would authorize the Regional Administrator to require any of the Part B information specified in these sections in addition to that already required for post-closure permits at these types of units. This approach would enable the Regional Administrator to require additional information as needed but would not otherwise compel the owner or operator to submit information that is irrelevant to post-closure care determinations.

To ensure substantive equivalency of authorities used in lieu of post-closure permits, today's proposal would require that part 270 information specifically required for post-closure permits must also be provided upon request by the Agency when an alternative authority is used in place of a post-closure permit. EPA requests comment on this approach.

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3. Post-Closure Plans and Permits

EPA anticipates that, in many cases where a post-closure permit is inappropriate or difficult to issue, the regulatory agency will choose to issue a post-closure plan under interim status authorities to address long-term care of the regulated unit (e.g., groundwater monitoring and maintenance of the cap) and a section 3008(h) order for facility-wide corrective action. EPA generally believes that this approach provides a reasonable alternative to a post-closure permit, as long as the substantive post-closure care requirements of proposed § 265.121 are satisfied.

EPA believes that, for the most part, proposed § 265.121 requirements can be satisfied using this approach. The section 3008(h) corrective action order would be structured to address all SWMUs on the facility, and public participation, under EPA's current policy, would occur at the time of corrective action remedy selection. The post-closure plan approval would be subject to public comment, in accordance with § 265.118, and it would in most respects impose appropriate long-term care requirements.

To assure that the post-closure plan will provide the same degree of environmental protection as would a permit, EPA is proposing in § 265.121(a)(1) to provide EPA the authority to impose part 264 groundwater monitoring requirements through the part 265 post-closure plan process. In addition, proposed § 265.121(a)(3) would provide EPA the authority to require submission of information necessary to impose part 264 groundwater monitoring requirements through a post-closure plan. This authority would expand the options available to the Agency to address post-closure facilities, without affecting the level of environmental protection or public participation.

4. Alternate Authorities Issued Prior to the Effective Date of the Final Rule

It is likely that prior to final promulgation of this rule, EPA and authorized States will have initiated and, in some cases, completed actions under a variety of regulatory authorities, other than post-closure permits, to address post-closure and corrective action at facilities currently subject to post-closure permit requirements. It also is likely that those actions, if taken after promulgation, would have satisfied the requirements of this rule. The Agency does not believe it would make sense to require EPA or the State to go through procedural steps to satisfy regulatory requirements where environmental needs at a facility have been addressed adequately. Therefore, the Agency is proposing, under § 265.121(c), a procedure for the Agency to review activities initiated or conducted in full prior to promulgation of this rule, to determine whether the requirements applicable to the facility have been met.

Under proposed § 265.121(c), EPA would provide public notice of its activities at the facility and its determination that the facility has been addressed, and solicit public comment. After review of public comment, the Agency would determine whether the activities conducted at the facility were adequate to satisfy the requirements of part 265. If the activities were found to be deficient, EPA would impose additional requirements either by amending the existing order, issuing a new order, modifying the post-closure plan, or requiring a post-closure permit.

III. Request for Public Comment on Closure and Post-Closure Related Issues

Today's notice proposes several amendments to the regulations governing closure and post-closure care. It is important to clarify that the regulatory amendments proposed today represent an initial step in a broader effort to improve the existing closure process. The Agency recognizes the need to amend the existing regulations beyond what is proposed today.

Specifically, the Agency recognizes a need to more effectively integrate the closure and corrective action activities at facilities, and to have closure requirements and timeframes that reflect the complexities of such activities. In the following discussion, the Agency solicits comment on both of these issues. In addition to soliciting comment on both specific issues discussed below, the Agency also solicits general comment on the closure process, including impediments to implementing the current requirements and options to improve the process.

A. Regulatory Timeframes

As was discussed above, the current closure regulations were promulgated before the Agency had any experience with closure under RCRA standards; not surprisingly therefore, they do not always reflect the complexity of closure activities. One oversimplification in the current closure process is the imposition of timeframes for closure activities and closure plan approval. Expectations built based on these timeframes (as well as other factors) have caused GAO to criticize the pace at which the Agency is bringing facilities to closure.

In a report issued in May of 1991, entitled *Progress in Closing and Cleaning Up Hazardous Waste Facilities*, GAO criticized the Agency's progress in completing closure activities at the approximately 1000 land disposal facilities that lost interim status in 1985. GAO pointed to the regulatory timeframes in the closure process and determined that the closure activities should be complete at those facilities. In a later report entitled *Impediments Delay Timely Closing and Cleanup of Facilities*, issued in April of 1992, GAO expressed concerns that owners and operators can almost indefinitely delay the closure process. GAO suggested that the Agency should use the regulatory closure timeframes to prevent prolonged cleanup activities.

The Agency disagrees that the current regulatory timeframes for closure completion could be used to ensure that closure is completed within those timeframes. Rather, the Agency believes, as was discussed earlier in this preamble, that in many cases the timeframes for closure completion do not reflect the technical complexity of the process. In the following discussion, the Agency solicits comment on options for removing or extending the timeframes in the current closure regulations.

1. Closure Plan Review and Approval Process

In 1982, the Agency promulgated regulations that included timeframes for review and approval of closure plans. At the time, the Agency believed the timeframes were reasonable. Under these regulations, EPA must approve, modify or disapprove a closure plan within 90 days of its initial submission. Upon disapproval of the plan, the owner or operator must submit a new or revised plan within 30 days. The Agency then has 60 days to approve or modify the resubmitted plan.

These timeframes were developed before the Agency had experience implementing closure, and prior to the enactment of HSWA. Since that time, experience has indicated that closures are often more complex than anticipated, particularly for older units requiring corrective action. Consequently the timeframes established in the regulations often are not met by the Agency and the regulated community. Based on this experience, the Agency today seeks comment on the need to revise existing timeframes, and on alternative approaches to the review and approval process.

EPA specifically seeks comment on the option of eliminating mandatory timeframes. This change would allow

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for case-by-case variation in the time allowed for closure plan review and revision. The time required to process individual closure plans varies widely according to the scope and complexity of the closure activity, the quality of the plan submitted, and the extent of revision required. An additional important variable is the need to coordinate closure with corrective action required at the site. In addition to providing flexibility to account for site-specific variation, removing timeframes would allow EPA and the States to prioritize their workloads and to process closure plans on a worst-site first basis.

On the other hand, EPA recognizes the need to maintain accountability for timely and effective implementation of RCRA. Timeframes provide a simple, straightforward means of auditing performance and, by removing them, the Agency may be removing an important means of insuring accountability. In light of this concern, a second alternative may be to retain but extend the current timeframes to more accurately reflect time needed to complete specific closure activities. The Agency is not now suggesting alternate time periods, but solicits comment on specific timeframes that may be more reasonable and appropriate.

2. Timeframes for Completion of Closure Activities

Under existing regulations, facilities must complete closure within 180 days of receipt of the final volume of hazardous waste, or 180 days after the closure plan has been approved, whichever is later. Extensions may be approved upon demonstration of need. These timeframes are designed to prevent closures from dragging on for indefinite periods. The Agency is concerned that if closure is not addressed in a timely manner, there is an increased likelihood of releases from the unit into the environment, and that the financial situation of the facility may deteriorate such that it will be unable to complete closure activities on its own.

On the other hand, the Agency has found that the 180-day time period has been insufficient for a majority of closed and closing RCRA facilities. Activities required to complete closure (e.g. securing contracts, developing plans and specifications, bidding and construction) have proven to be more time consuming and complicated than originally anticipated. As noted above, the size and scope of the closure activities are important variables that may significantly affect time required to achieve final closure. Appropriate timeframes may also vary widely based on the type of remedies pursued. Bioremediation or waste fixation, for example, may constitute effective, albeit longer-term means of meeting closure performance standards. Another important consideration that frequently warrants extension of the closure period is the need to schedule closure activities to correspond with required corrective action.

Extensions may be granted if the owner or operator can demonstrate need in accordance with existing provisions. EPA is concerned, however, that extensions may have become the rule rather than the exception. Based on these concerns, EPA is considering revision of the 180-day closure completion period. Given the site-specific nature of time needed to complete closure, EPA is considering proposing that time periods for completing closure be developed on a facility specific basis through the closure plan process. Another alternative would be to establish a longer more appropriate mandatory time period for completing closure.

Under any alternative, EPA believes it is appropriate to retain the existing provision that, in instances where closure will take longer than 180 days, the owner or operator must certify that he has taken and will continue to take all steps to prevent threats to human health and the environment.

EPA solicits comments on whether the 180-day closure completion period should be revised and, if so, how it should be amended to provide necessary flexibility while ensuring effective and timely closures.

B. Regulatory Distinction Between Regulated Units Undergoing Corrective Action and Non-Regulated Solid Waste Management Units

The universe of closed and closing regulated land disposal units includes a number of units that have released hazardous wastes and constituents into soils and groundwater surrounding the unit. In terms of the environmental risk associated with these regulated units, and the activities necessary to address that risk, these units are indistinguishable from non-regulated solid waste management units. In many cases, particularly in the case of unlined land-based units, closure of the regulated unit will involve many of the same activities as do corrective actions conducted under the authority of § 264.101 or RCRA section 3008(h). However, in the case of regulated units, the regulations of parts 264 and 265 governing groundwater monitoring, closure and post-closure care, and financial assurance continue to apply during cleanup.

The Agency is concerned that this dual regulatory scheme often limits the Agency's ability to determine the best remedy at regulated units. The Agency believes that there are many situations where allowing the Regional Administrator to make a site-specific determination, rather than strictly applying the full range of parts 264 and 265 requirements, would better serve the goal of expedited closure of the unit.

Consider, for example, the situation where EPA or an authorized State addresses, through its corrective action authorities, a collection of adjacent units releasing hazardous constituents to the environment. If one of those units were a regulated unit, while the others were non-regulated solid waste management units, two regulatory regimes would arguably apply. Under the current regulatory structure, EPA might select remedies for the solid waste management units through the proposed 40 CFR subpart S process, while the regulated unit would remain subject to part 264 and part 265 closure and groundwater monitoring requirements. Thus, in one case groundwater cleanup levels would be selected through a balancing process comparable to Superfund's, while for the regulated unit, the owner or operator might be required to clean the site up to background, or seek an Alternative Concentration Limit under § 264.94. In this case, EPA does not believe retaining a dual regulatory structure serves the goal of expedited cleanups. Rather, it believes that the corrective action process, which was specifically designed for remedial activities, would be more appropriate to address the closed regulated units.

In other cases, the regulations might prevent the owner or operator from closing the unit in a manner that meets the closure performance standard of §§ 264.111 and 265.111. For example, where waste has been removed from a unit but contaminated soils remain, the remedy that might best prevent future releases from the unit could include installation of an infiltration system and flushing of soils over time to remove remaining contamination. However, the requirement of §§ 264.310 and 265.310 that the unit be covered with an impermeable RCRA cap would arguably rule out or significantly complicate the remedy, because soils could not be flushed beneath a cap, and the contaminated soils would remain untreated.

The Agency is considering amendments to the requirements of parts 264 and 265 that would reduce or

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eliminate the regulatory distinction between closed or closing regulated units that require corrective action and other solid waste management units. EPA, therefore, solicits comment on whether to allow the Regional Administrator to establish groundwater monitoring, closure and post-closure care, and financial assurance requirements on a site-specific basis at regulated units addressed through the corrective action process. Under this approach, the Regional Administrator would look to the corrective action process, rather than the unit-specific technical standards designed for regulated units, to determine remedial objectives and standards. This would allow EPA to develop, through the corrective action process, a consistent overall remedy, tailored to the specifics of the situation.

The Agency specifically solicits the following information:

(1) Situations where it is important to retain the regulatory distinction between regulated units undergoing corrective action and other solid waste management units,

(2) Specific requirements applicable to regulated units that should be retained (if any),

(3) Situations where it is important to eliminate the distinction between regulated units undergoing corrective action and other solid waste management units, and

(4) Specific requirements applicable to regulated units that impede cleanup at those units.

IV Proposed Provisions Related to State Enforcement Authority to Compel Corrective Action at Interim Status Facilities

A. Background Information

The HSWA amendments of 1984 substantially expanded corrective action authorities for both permitted RCRA facilities and facilities operating under interim status. Section 3004(u) requires that any hazardous waste management permit issued after November 8, 1984, address corrective action for releases of hazardous waste or hazardous constituents from any solid waste management unit (SWMU) at the facility. Section 3004(v) extends corrective action authority to cover releases migrating off-site. Section 3008(h) provides EPA with enforcement authority to require corrective action at interim status facilities. Sections 3004 (u) and (v) became immediately effective in all States and are administered by EPA until States become authorized for HSWA corrective action (*see* section VI of this preamble for further discussion). Section 3008(h) also became effective immediately.

On July 15, 1985, and December 1, 1987 the Agency codified in § 264.101 the requirements of sections 3004 (u) and (v) for addressing corrective action at permitted facilities (*see* 50 FR 28747 and 52 FR 45788). As a result, States wishing to obtain or retain authorization to implement subtitle C hazardous waste management programs must adopt permitting authorities that are at least as stringent as the provisions in § 264.101.

Prior to today's rule, however, the Agency had not proposed that States adopt as part of an adequate enforcement program, the authority to issue enforcement orders to compel corrective action at interim status facilities (section 3008(h) authority). While many States may have authorities comparable to section 3008(h), they have not been reviewed by the Agency through the State authorization process. EPA is proposing today to require States to adopt such authority. As with all other EPA enforcement authorities, EPA will maintain it's authority to implement section 3008(h).

B. Summary of Proposed Provisions

The Agency, through today's proposal, would require States to adopt, as part of an adequate enforcement program, the authority to issue enforcement orders to compel corrective action at interim status facilities. States will now need to be authorized for both corrective action at permitted facilities under authorities comparable to sections 3004 (u) and (v) and at interim status facilities under an authority comparable to section 3008(h). States may choose to enhance their enforcement program by adopting an authority comparable to section 3008(h) prior to authorization for corrective action at permitted facilities. For example, a State with a cleanup authority that can address interim status facilities could include such authority as part of its adequate enforcement program, even if it did not yet have authority to address corrective action at permitted facilities.

The Agency would require that the State interim status enforcement authorities be comparable in scope to section 3008(h) authority. Section III.C. of this preamble describes conditions that a State enforcement authority would have to meet to be considered comparable to section 3008(h) authority

C. Analysis and Discussion

The RCRA regulations at § 271.16 specify the requirements for enforcement authorities that States must meet in order to gain and maintain authorization to administer the RCRA program. The Agency is proposing to amend the requirements for enforcement authorities at § 271.16 to require States to have authority to compel corrective action at interim status facilities.

The Agency believes that requiring States to adopt such authority will enhance the State's role as the primary implementing authority for the RCRA Subtitle C program. Furthermore, today's proposal will ensure that States have the full range of RCRA clean up authority granted EPA by Congress, and, therefore, will promote a more complete and consistent delegation of the corrective action program to the States. As currently practiced, delegation of the corrective action program to address permitted facilities, but not interim status facilities, causes confusion in the regulated community and makes it more difficult for the States to establish priorities and manage resources efficiently. Furthermore, redundant or inconsistent regulation may result. Today's proposal enhances the State's ability to take the lead for RCRA cleanup activities at all RCRA treatment, storage, and disposal facilities—interim status as well as permitted. Furthermore, EPA believes that this will promote consistency between corrective actions compelled by the Federal and State corrective action programs. The proposed regulations will ensure that equivalent corrective action activities are implemented at interim status facilities, regardless of whether the action is initiated by EPA or a State.

The Agency believes that most States, especially those authorized for corrective action under sections 3004 (u) and (v), may already have the type of enforcement authority that would be required by today's proposal. EPA specifically requests comment from States as to whether the Agency is correct in this assumption. In addition, the Agency requests comment regarding the difficulty of obtaining such an enforcement authority in States where it does not already exist.

Requiring States to obtain the ability to issue interim status corrective action orders also complements today's proposal to allow alternative mechanisms (i.e., orders) to replace post-closure permits. Today's proposal ensures that all States have authority to address both corrective action and post-closure care at interim status facilities.

The Agency will retain its ability to issue section 3008(h) orders. The Agency believes that in many cases, it will be more efficient to continue to implement section 3008(h) orders

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already in place, even if the facility is located in a State which has adopted a corrective action order authority as part of their adequate enforcement program. Issuance of a State corrective action order to an interim status facility would not preclude subsequent corrective action requirements pursuant to sections 3004 (u) and (v). Although EPA would retain the authority to issue section 3008(h) orders to interim status facilities, the Agency anticipates that such actions would be filed in States authorized for interim status corrective action authority only after careful consideration and only in cases that meet any of the following criteria:

(1) The State fails to take timely and appropriate action;

(2) The State's action is clearly inadequate; or

(3) Cases that are of national significance. Of course, the Agency will consider using its section 3008(h) authority to compel corrective action if requested by a State.

The Agency does not intend to duplicate past efforts conducted as part of the State authorization process for HSWA corrective action through this rulemaking. Where appropriate, the Agency will review previously submitted State corrective action authorization packages for permitted facilities to evaluate a State's interim status corrective action order authority. However, it may be necessary for States to augment previous authorization packages with supplemental information to enable the Agency to evaluate fully such order authorities.

Under this proposed rule, States that have not yet been authorized for corrective action at permitted facilities could apply for authorization for corrective action authority at interim status facilities. In such a case, EPA would require the State to develop a Memorandum of Agreement (MOA) with EPA to provide the Agency the opportunity to comment on draft orders prior to issuance. Prior to today's proposal, EPA has not established a right to comment on draft orders. However, in the case where States are not yet authorized for corrective action at permitted facilities, the Agency believes that it would be important to have such opportunity to ensure consistent implementation of the RCRA corrective action program. To accommodate variations in State procedural rules, EPA would allow these States and the Regions to decide exactly how and when EPA would submit comments on State orders in the State/EPA MOA.

D. EPA's Interpretation of the Scope of Section 3008(h)

The Agency uses section 3008(h) authority to address releases at interim status facilities authorized to operate under section 3005(e) of RCRA. In a December 16, 1985, memorandum from J. Winston Porter, then Assistant Administrator of the Office of Solid Waste and Emergency Response, *"Interpretation of Section 3008(h) of the Solid Waste Disposal Act,"* EPA interpreted section 3008(h) to enable the Agency to respond to releases of hazardous waste or hazardous constituents at facilities that have, had, or should have had authorization to operate under interim status by taking either judicial or administrative action. States must demonstrate that their authority can address an equally broad universe of facilities, through either judicial or administrative action, and that their order authorities, at a minimum, meet the criteria discussed below.[2]

1. Definition of Facility

In a recent rule, (Corrective Action Management Units and Temporary Units (58 FR 8658, February 16, 1993)), EPA defined "facility" for corrective action purposes as "all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA." The Agency interprets "facility" to have the same meaning under section 3008(h). EPA is proposing that States must demonstrate that their cleanup order authorities contain a definition of "facility" that is at least as broad as that available under section 3008(h) or that the State authority otherwise has a scope as broad as section 3008(h).

2. Definition of Release

While the statute does not define the term "release," the Agency has interpreted the term to be at least as broad as the definition of release under CERCLA section 101 (22). The Agency considers a release to be any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The legislative history (***) also makes it clear that the term release is not limited to releases to ground water. Therefore, the Agency uses section 3008(h) to address releases of hazardous waste or hazardous constituents[3] from a facility. EPA is proposing that States demonstrate that their corrective action order authorities include a definition of release that is as broad as that being used by EPA under section 3008(h), or otherwise has the authority to address all "releases" as defined under that section.

3. Off-Site Releases

EPA interprets section 3008(h) to include the responsibility to address corrective action beyond the facility boundaries as set out in section 3004(v). Section 3004(v) requires owners and operators to take corrective action beyond the facility boundary where such action is necessary to protect human health and the environment unless the owner or operator of the facility demonstrates that, despite best efforts, it is unable to obtain the necessary permission to undertake such action. EPA proposes to require States to be able to impose similarly stringent requirements.

4. Compelling Compliance

In cases of failure to comply with an order issued under section 3008(h) of RCRA, EPA may assess a civil penalty of up to $25,000 for each day of non-compliance. Section 3008(h) also allows EPA to commence a civil action for appropriate relief including a temporary or permanent injunction, or a suspension or revocation of a facility's authority to operate under interim status.

Before States enforcement programs can be deemed adequate under today's proposal (i.e., authority to address corrective action at interim status facilities), they must have the ability, either judicial or administrative, to assess and collect civil penalties. Current requirements for adequate enforcement programs found in §§ 271.15 and 271.16, require States to have administrative or judicial authority to assess penalties up to $10,000 per day Although section 3008(h) enables the Agency to assess penalties up to $25,000 per day at this time, EPA is not proposing to require States programs to meet the penalty amounts currently specified in section 3008(h). However, the Agency is seeking comment on whether §§ 271.15 and 271.16 should be amended to require States to demonstrate that their penalty authority is consistent with EPA's (the ability to collect penalties of up to $25,000 per

[2] The Agency's interpretation of the corrective action authorities under section 3008(h) and sections 3004 (u) and (v) are virtually identical. Therefore, criteria discussed in this section related to the Agency's interpretation of section 3008(h) are applicable to the discussion of sections 3004 (u) and (v) in section IV of this preamble, unless otherwise noted.

[3] Hazardous constituents are the substances listed in 40 CFR, Part 261, Appendix 8.

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day for non-compliance with RCRA and/or its regulations).

In addition, EPA will accept any State authority as part of their adequate enforcement program that allows assessment and collection of penalties for non-compliance with a cleanup order. States must be able to apply such penalty authority to facilities subject to interim status requirements under Subtitle C.

Today's proposal would also require States to demonstrate that they have the ability to suspend or revoke a facility's authority to operate under interim status and commence a civil action for appropriate relief, including a temporary or permanent injunction under the cleanup order authority or under a separate authority that can be applied to interim status facilities.

5. Application of Order Authority

EPA believes that State enforcement programs will be enhanced by requiring that such programs have the authority to use orders to address corrective action at interim status facilities. To provide States flexibility to satisfy this newly proposed requirement for authorization, EPA would allow States to request authorization for any State law or enforcement authority that meets the minimum requirements of section 3008(h) as discussed earlier in this section of the preamble.

Furthermore, the Agency has found that in some States, those agencies responsible for the RCRA program may not be responsible for enforcing RCRA order requirements. For example, the State's interim status corrective action orders might only be enforceable through the State Attorney General's Office. In this case, a Memorandum of Agreement (MOA) would be required between the two State agencies to allocate responsibilities for any necessary enforcement. Such MOA must be available for Agency review.

In order to facilitate authorization of State enforcement programs, the Agency requests comment on whether or not it would be appropriate to provide interim authorization for the corrective action order authority as proposed in today's rule.

V Request for Comment on Authorizing States to Use State Orders to Impose Corrective Action at Permitted Facilities

In the course of authorizing States for sections 3004 (u) and (v) authority, the Agency has recognized that some States would like to compel corrective action at permitted facilities (all TSD facilities) through a State order, in lieu of writing specific permit conditions to implement section 3004 (u) and (v). For example, a State that has years of experience implementing a broad and powerful cleanup order authority may prefer to rely on this authority rather than imposing corrective action through permits; or a State that is already requiring facility-wide cleanup through an order issued under a State statute may find that at the time of permit issuance, no additional permit requirements are necessary

To ensure that such cleanup orders meet the requirements of sections 3004(u) and (v), EPA would require States to assess the completed cleanup conducted under an order against the requirements of sections 3004(u) and (v). In addition, such orders must be incorporated by reference in the permit, which means the State's normal permit appeal procedures apply to the provisions of the order. Finally the permit would need to include "reopener" language to ensure that if the requirements of sections 3004(u) and (v) were not met, the State would have the opportunity to modify the permit to require any additional work.

EPA is seeking comment on whether this concept (i.e., using orders in lieu of section 3004(u) and (v) permit conditions) should be made available to the States as an option for implementing corrective action, and whether it would be useful to facilitate cleanups and provide flexibility to States seeking authorization for corrective action. If this concept were eventually adopted, States wishing to use cleanup order authority as the principal vehicle for corrective action at permitted facilities would have to demonstrate to EPA that the order authority is at least as broad as the requirements of sections 3004(u) and (v). The specific requirements for section 3004(u) and (v) can be found under the similar discussion of section 3008(h) requirements found in section IV of this preamble. Please note, however, that the Agency is not expanding its interpretation of section 3008(h) authority to include permitted facilities. Rather, the Agency believes that some States may have very broad authorities that can address both interim status and permitted facilities.

VI. Public Participation

It is the Agency's policy to provide a meaningful opportunity for members of the public to be informed of, and participate in, decisions that affect them and their communities. This policy applies to corrective action conducted under both orders and permits.

In this notice, the Agency is proposing to:

(1) Allow the use of orders in lieu of post-closure permits, and

(2) Require States to adopt authority as part of their authorized programs, to address corrective action at interim status facilities. Furthermore, the Agency has asked for comment on allowing States to address corrective action through order authorities in lieu of sections 3004(u) and (v) at permitted facilities. The Agency would involve the public in each of these scenarios through the following procedures.

A. Public Participation Requirements When Issuing a Section 3008(h) Order in Lieu of a Post-Closure Permit

Under today's proposal, all orders issued in lieu of post-closure permit conditions, in conformance with proposed § 270.1(c)(7), must follow the public participation procedures of 40 CFR part 121, which are discussed in section V.A.2.c. of this preamble.

B. Public Participation Requirements for State Corrective Action Orders at Interim Status Facilities

Today's proposal would require States to obtain the ability to address corrective action at interim status facilities with an order authority. Current Agency policy strongly encourages that the opportunity for public participation be provided prior to final remedy selection.[4] Therefore, States seeking authorization for 3008(h) order authority must have a rule or a policy for public participation that is consistent with EPA's current policy

At this time, the Agency is also asking for comment on whether it would be appropriate to mandate the use of public participation through regulation (specifically the public participation regulations proposed under today's rule at section V A.2.c. (40 CFR part 121)), for all orders addressing RCRA corrective action at interim status facilities.

C. Public Participation Requirements for Orders Used to Address Corrective Action at Permitted Facilities in Lieu of Sections 3004(u) and (v)

The Agency is asking for comment on whether it would be appropriate to allow State corrective action order authorities to address corrective action at permitted facilities in lieu of sections 3004(u) and (v). States seeking to be authorized for such authority would have to demonstrate that their cleanup order authority provides for public participation prior to final remedy

[4] This policy reflects section 7004(b) of RCRA, which requires EPA to provide for and encourage public participation in RCRA actions, including enforcement.

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selection. The Agency solicits comment on whether it should require that those public participation requirements be equivalent to the requirements of parts 124 and 270, or whether it should approve the use of alternative procedures.

VII. Effect of Today's Proposed Rule on State Authorization

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 the enforcement authorities of sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (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 permit. When new more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. 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 HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including issuance of permits, until the State is granted authorization to do so. While States must still adopt more stringent HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect of Today's Proposed Revisions to Closure and Post-Closure Requirements on State Authorizations

This rule proposes revisions to the post-closure requirements under HSWA and non-HSWA authorities. The proposed requirements in §§ 265.110, 265.121 (except for paragraph 265.121(a)(2)), 270.1, and 270.27 are proposed under non-HSWA authority. Thus, those requirements would become immediately effective only in States that do not have final authorization, and would not be applicable in authorized States unless and until the State revises its program to adopt equivalent requirements. Section 265.121(a)(2) is proposed under HSWA authority. Thus, that section would become immediately effective in all States.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, 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. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are not more stringent or reduce the scope of the Federal program, States are not required to modify their programs (*See* 40 CFR 271.1(i)).

The provisions of today's rule related to post-closure permit requirements are not more stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent to the provisions contained in today's proposed rule. If the State does modify its program, EPA must approve the modification for the State requirements to become subtitle C RCRA requirements.

C. Effect of Today's Proposed Revisions to Requirements for Enforcement Authority on State Authorizations

1. Requirement to Adopt Provisions of Today's Proposal

The provisions of today's rule requiring States to adopt enforcement authorities comparable to section 3008(h) are more stringent than the current Federal program. Therefore, States wishing to seek or retain authorization would be required to adopt those provisions.

2. Effect of Proposed Rule on Federal Enforcement Authorities in States that Obtain Authorization for Today's Proposed Provisions

Since 1980, EPA has required States to adopt civil and criminal enforcement authorities to enforce violations of authorized State statutes and regulations. EPA's authority to use its own enforcement authorities, however, does not terminate when it authorizes a State's enforcement program.

Section 3008(a) allows EPA to enforce any "requirement" of subtitle C. This provision allows EPA to bring administrative and/or judicial enforcement actions to enforce subtitle C requirements even in States authorized to implement subtitle C programs in lieu of the federal program. (Section 3008(a)(2) clearly reflects this authority.) EPA has always used this authority sparingly because it believes States should take the lead role in enforcing their authorized programs. Nevertheless, EPA's continuing enforcement authority can be an essential tool in ensuring that the regulated community meets its obligations to manage hazardous waste in a manner that provides adequate protection for human health and the environment. For the same reasons, EPA will retain its authority to issue corrective action orders to interim status facilities under section 3008(h).

VIII. Regulatory Impact Analysis

A. Executive Order 12866

Under Executive Order 12866, which was published in the **Federal Register** on October 4, 1993 (*see* 58 FR 51735), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy a sector of the economy, productivity competition, jobs, the environment, public health or safety or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record for this rulemaking (*see* Docket # F-94-PCPP-FFFFF).

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B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* at the time the Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities. The provisions of today s rule would expand the options available to address post-closure care so that a permit would not be required in every case, would impose no requirements on owners and operators in addition to those already in effect—nor would the provisions of this proposal that would require States to adopt, as part of an adequate enforcement program, authority to compel corrective action at interim status facilities. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The recordkeeping and reporting requirements of this proposed rule would replace similar requirements already promulgated. Thus, this rule imposes no net increase in recordkeeping and reporting requirements. As a result, the reporting, notification, or recordkeeping (information) provisions of this rule do not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 270

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

40 CFR Part 271

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

Dated: October 25, 1994.

Carol M. Browner,

Administrator.

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

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

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

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

2. Section 264.90 is amended by adding a new paragraph (e) to read as follows:

§ 264.90 Applicability.

(e) The regulations of this subpart apply to all owners and operators subject to the requirements of § 270.1(c)(7) of this chapter to obtain either a post-closure permit or equivalent mechanism. Where these facilities are addressed through mechanisms other than a permit, references to "in the permit" in this subpart mean in whatever mechanism the Agency uses to implement the post-closure requirements. In the case of unpermitted facilities that are required by § 265.121 of this chapter to comply with the requirements of this section, any necessary corrective action will be specified in the enforcement order or other enforceable document issued by the Agency in lieu of a post-closure permit.

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

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

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

2. Section 265.110 is amended by adding a new paragraph (c) to read as follows:

§ 265.110 Applicability.

*

(c) Section 265.121 applies to owners and operators of units that are subject to the requirements of § 270.1(c)(7) of this chapter and do not obtain a post-closure permit for the unit.

3. A new § 265.121 is added to subpart G to read as follows:

§ 265.121 Additional post-closure requirements.

(a) The Agency will impose the following additional requirements on owners or operators that do not obtain a post-closure permit but are subject to post-closure care requirements:

(1) The requirements of §§ 264.90–264.100 of this chapter;

(2) Facility-wide corrective action, consistent with § 264.101 of this chapter;

(3) The information submission requirements of § 270.27 of this chapter;

(b) The Regional Administrator must either:

(1) Provide opportunity for public participation, at the point of remedy selection if corrective action is required at the facility, or upon making a determination that corrective action is not needed, that includes the following:

(i) Publication of a notice of availability and a brief analysis of the proposed remedy or notice of the determination that corrective action is not needed, in a major local newspaper of general circulation;

(ii) A reasonable opportunity not less than 30 calendar days, for public comment and, upon timely request, extend the public comment for a period by a minimum of 30 additional days;

(iii) Opportunity for a public meeting to be held during the public comment period at a location convenient to the population center nearest the site at issue;

(iv) A tape or written transcript of the public meeting available to the public;

(v) A written summary of significant comments and information submitted during the public comment period and the EPA or State response to each issue available to the public;

(vi) In the written summary required in paragraph (b)(1)(v) of this section, a discussion of significant changes in documentation supporting the final remedy selected or a request for additional comment on a revised remedy selection if, after publication of the proposed remedy and prior to the adoption of the selected remedy, the remedy is changed such that it significantly differs from the original proposal with respect to scope, performance, or cost as a result of new information; or

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(2) If the Regional Administrator determines that even a short delay in the implementation of the remedy would adversely affect human health or the environment, the Regional Administrator may comply with the requirements of paragraph (b)(1) of this section after initiation of the remedy. These requirements must be met before the Regional Administrator may consider the facility addressed under § 270.1(c)(7) of this chapter.

(c) If the activities required of the owner or operator by this section were initiated or conducted prior to [effective date of the final rule], the Regional Administrator may make a determination that the requirements of paragraphs (a) (1), (2), and (3) of this section have been met. Upon making that determination, the Regional Administrator must, before considering the facility to be fully addressed under § 270.1(c)(7)(ii) of this chapter, provide the public notice of that determination in accordance with the procedures outlined in paragraph (b)(1) of this section.

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

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

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

2. Section 270.1 is amended by revising paragraph (c) introductory text and adding a new paragraph (c)(7) 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 part 261 of this chapter.

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 and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under § 270.1(c) (5) and (6), or they comply with the alternative post-closure requirements of § 270.1(c)(7)(i)(B). 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. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(7) *Post-closure care permits.* (i) Unless they demonstrate closure by removal or decontamination as provided by § 270.1 (c)(5) and (c)(6), 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 of this chapter) after January 26, 1983, must comply with either of the following requirements, as determined by the Regional Administrator:

(A) Obtain a post-closure permit in accordance with § 270.1(c); or

(B) Obtain an enforceable order or other enforceable document (or combination thereof), or be subject to a CERCLA response action or state response action imposing the conditions specified in § 265.121 of this chapter.

(ii) The Regional Administrator must assure that post-closure needs at facilities subject to the requirements of this paragraph (c)(7) are addressed under either paragraph (c)(7)(i)(A) or (c)(7)(i)(B) of this section.

4. Section 270.14 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 270.14 Contents of part B: General requirements.

(a) For post-closure permits, only the information specified in § 270.27 is required in Part B of the permit application.

5. A new § 270.27 is added to subpart B to read as follows:

§ 270.27 Part B information requirements for post-closure permits.

For post-closure permits, the owner or operator is required to submit only the information specified in §§ 270.14(b) (1), (4), (5), (6), (11), (13), (14), (16), (18) and (19), 270.14(c), and 270.14(d), unless the Regional Administrator determines that additional information from §§ 270.14, 270.16, 270.17 270.18, 270.20, or 270.21 is necessary.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

2. Section 271.16 is amended by adding a new paragraph (e) to read as follows:

§ 271.16 Requirements for enforcement authority.

(e) Any State administering a program shall have available judicial or administrative action to respond to releases of hazardous waste or hazardous constituents at interim status facilities as provided by section 3008(h).

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