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Note to Correspondents

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EPA REACHES SETTLEMENT ON "CAMU" RULE

The Environmental Protection Agency, the Environmental Defense Fund, the Natural Resources Defense Council and the Environmental Technology Council today reached a settlement agreement on the pending litigation over the Corrective Action Management Unit (CAMU) regulation for remediation waste under the Resource Conservation and Recovery Act (RCRA). The settlement is being filed today in the U.S. Court of Appeals for the District of Columbia Circuit. Under the settlement, if EPA promulgates amendments to the CAMU rule described in the settlement and certain other conditions are met, the CAMU lawsuit will be dropped.

Timothy Fields Jr., EPA Assistant Administrator for Solid Waste and Emergency Response, said, "Today's landmark settlement on CAMU is critical to sustain the success of the RCRA cleanup reform agenda. The settlement significantly reduces the cloud of legal uncertainty over the CAMU rule that has discouraged hazardous waste cleanups. By doing so this settlement will allow cleanups already underway to proceed, and it will encourage the cleanup of thousands of other hazardous waste sites across the nation."

The Agency has been in discussions for the better part of a year in an effort to settle litigation over the CAMU rule. In conjunction with the settlement process, EPA obtained feedback from many stakeholders from industry and the states to help inform today's settlement. The settlement calls for EPA to propose amendments to the existing CAMU rule by August 7, 2000, and to publish a final rule by October 8, 2001. While not part of the settlement, EPA also intends to include in the proposed amendments provisions for expediting state authorization of these amendments and will take public comment on all of the proposed changes.

Today's settlement calls for the Agency to amend the 1993 CAMU rule. That rule was written to address the potential disincentives to cleanup created by RCRA rules when applied to the management of RCRA hazardous remediation wastes during cleanup. Amendments to the 1993 rule specified in the settlement would establish CAMU-specific treatment and design standards. Among other things, the amendments would impose minimum treatment standards for principal hazardous constituents in CAMU wastes and minimum liner and cap standards for CAMUs. The settlement also includes a number of adjustment factors that allow for site-specific adjustments to treatment, striking a balance between minimum national standards and flexibility that is appropriate for the site-specific nature of cleanups.

For more information see: http://www.epa.gov/epaoswer/osw/cleanup.htm. For further information call Lauren Milone Mical, 202-260-4358.

Attachment A

(Attachment to settlement agreement filed February 11, 2000 in Environmental Defense Fund v. U.S. EPA, No. 93-1316(D.C. Cir.)(petition for review of Corrective Action Management Rule). Settlement also addresses petition for review filed by same petitioners in Environmental Defense Fund v. U.S. EPA, No. 99-1077 (D.C. Circuit) (regarding the "HWIR-Media" rule).)

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ATTACHMENT A

NOTE: The language below contains either rule language, points for discussion in the preamble (generally identified by an asterisk (*)), or otherwise describes the changes to be made.

I CAMU Eligibility

Location: Up front in the CAMU rule (§264.552)

> *CAMU-Eligible Waste* means,
>
> (a) all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.
>
> (b) Wastes that would otherwise meet the description in (a) are not "CAMU-Eligible Wastes" where: (1) the wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units, unless (i) the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or (ii) the containers are excavated during the course of cleanup; or (2) the Director exercises the discretion in [discretionary kickout--below] to prohibit the wastes from management in a CAMU.
>
> (c) Notwithstanding (a), where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

Part (a) of the CAMU-Eligible Waste Definition:

* Added clarifying language (from current CAMU preamble) to the existing definition of remediation waste, which is currently used to define what wastes are eligible to be managed in a CAMU. The changes are intended to make clear that "as-generated" wastes from routine hazardous waste management activities are not eligible for management in a CAMU. The primary intent is to create a "firewall" between industrial process waste and cleanup waste. Similarly, the discussion below is intended to clarify the distinction between process and cleanup waste by more thoroughly fleshing out what types of wastes are and are not "managed for implementing cleanup."

* Wastes "managed for implementing cleanup" include wastes removed during RCRA closure at closed or closing permanent land disposal units. "Closed or closing" means units that have received their final volume of waste. "Permanent land disposal units" are those for which the regulations provide a closure in place option (e.g., landfills, surface impoundments and some land treatment units).

* Wastes "managed for implementing cleanup" would not typically include wastes removed during RCRA closure of non-permanent land-based units (e.g., waste piles); in other words,

closure of such units would not be considered "cleanup." Similarly, hazardous sludges periodically removed from subtitle C regulated surface impoundments would not be included. Of course, wastes that have been released from such units would likely be the subject of "cleanup" and therefore eligible. The "typically" is intended to preserve the Agency's ability, for example, at abandoned facilities, to place waste found in old piles or similar units in a CAMU because once they are abandoned, management of wastes they contain is for the purpose of implementing cleanup.

* Rationale for previous two bullets: for piles and similar land-based storage units, removal of wastes is part of the normal course of operation; these units were not intended as the final resting place for wastes. Therefore, it would typically be inappropriate to consider such removal "cleanup." However, for permanent disposal units, closure by removal is cleanup, because the regulations provide an option for closure in place. Plus, the Agency seeks to encourage closure by removal – allowing CAMUs will do that.

Part (b)(1) of the CAMU-Eligible Waste Definition:

* "Other non-land-based units" – This concept is intended to include intact or substantially intact non-land-based units that are not "containers" or "tanks," but were designed to contain wastes (e.g., containment buildings under Part 264, Subpart DD and Part 265, Subpart DD).

* EPA interprets "substantially intact" to include units/containers with imperfections such that the unit/container can be removed without likelihood of a significant release to the environment. For example, some facilities have old underground masonry constructed units that have not been used in decades, and would arguably meet the definition of a tank. In some cases, given the age, construction, and size of these units, it would be reasonable to assume that the units are not substantially intact and therefore the wastes removed from the units would be CAMU-eligible. In other cases, such historic units would be considered land-based units under RCRA (e.g., old building foundations) and the waste would not be excluded from CAMU-eligibility.

Part (b)(2) of the CAMU-Eligible Waste Definition:

The Director may prohibit, where appropriate, the placement of waste in a CAMU where the Director has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of Part 268, or applicable Part 264 or 265 unit design requirements, or that non-compliance with other applicable RCRA requirements likely contributed to the release of the waste.

Amended §264.552(d):

The owner/operator shall provide sufficient information to enable the Regional Administrator to designate a CAMU in accordance with the requirements of §264.552. This information must include, unless not reasonably available, information: 1) on the origin of the waste and how it was subsequently managed (including a description of the timing and circumstances

surrounding the disposal and/or release); 2) whether the waste was listed or identified as hazardous at the time of disposal and/or release; and 3) whether the waste was subject to the land disposal requirements of Part 268 of this chapter at the time of disposal and/or release.

* Intent of Kickout: Allows exclusion from CAMU of wastes not managed in compliance with certain RCRA requirements through exercise of Director's discretion. Discretion provides balance between facilitating cleanups with CAMUs and maintaining incentives for waste minimization and proper waste management in the first instance. With discretionary authority, Director has the ability to use CAMUs, even if there had been prior non-compliance, where appropriate.

* Where appropriate to disallow CAMU management: The Director should consider exercising discretionary kickout where there was prior non-compliance with the applicable land disposal treatment standards of Part 268, the Part 264 or 265 unit design requirements, or where non-compliance with other applicable RCRA requirements likely contributed to the release of the waste. In the analysis of whether to disallow management in the CAMU, the Director will consider the significance of the violation, among other site-specific factors. It would be generally appropriate to allow management in a CAMU where the entity seeking the CAMU is not the same entity, or affiliated with the entity, that mishandled the waste.

* The information submission approach would provide the Director and the public with information on the circumstances surrounding the origin and subsequent management of the waste. The Director would use this information for the purposes of deciding whether the waste is CAMU eligible, including whether such waste is one for which kickout should be considered. For the purpose of determining CAMU eligibility, the Director should, where appropriate, seek information regarding waste history beyond that initially submitted pursuant to §264.552(d). In particular, where the information submission raises concerns about prior waste management or where the Director has some other information--such as information already in its possession or brought to the Director's attention by a citizens group--that raises concerns about prior waste management, the Director should seek additional information necessary to determine whether to invoke the discretionary kickout authority. Where information responding to the requirements in §552(d)(1)-(3) is not reasonably available, the facility could fulfill these information submission requirements by informing the Director on the extent of its knowledge about the waste and releases.

* The term "unit design requirements" refers to substantive design standards, such as the tank design standards under 40CFR §264.192 or the design requirements for waste piles under §264.251. Maintenance requirements, such as the owner/operator requirement to inspect tanks under §264.195, would be addressed under the phrase "or that non-compliance with other applicable RCRA requirements likely contributed to the release of the waste."

Liquids in CAMUs

Location: Up-front in CAMU rule (§264.552)

Prohibition Against Placing Liquids in CAMUs

(a) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(b) The requirements in §264.314(d) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(c) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless: (i) such placement facilitates the remedy selected for the waste; or (ii) a demonstration is made pursuant to §264.314(f).

* Consistent with the long-standing approach for landfills, liquids should generally not be placed in CAMUs. However, there will be instances where it is appropriate to place liquids or wastes containing liquids in CAMUs to facilitate the remedy selected for the waste. Liquids might be introduced into the CAMU, for example, during dewatering of sludges or sediments, to facilitate bioremediation, for soil washing or solvent extraction technologies, for dust suppression.

II Identification of "Principal Hazardous Constituents"

Location: probably after or as a modification to §264.552(e).

(a) CAMU-eligible wastes that, absent this section, would be subject to the treatment requirements of Part 268, and that the Director determines contain principal hazardous constituents must be treated to the standards specified in [treatment requirements]. Principal hazardous constituents are those constituents that the Director determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site. In general, the Director will designate as principal hazardous constituents: 1) carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and, 2) non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose. The Director will also designate constituents as principal hazardous constituents, where appropriate, based on risks posed by the potential migration of constituents in wastes to groundwater, considering such factors as constituent concentrations, and fate and transport characteristics under site conditions. The Director may also designate other constituents as principal hazardous constituents that the Director determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(b) In determining which constituents are "principal hazardous constituents," the Director must consider all constituents which, absent this section, would be subject to the treatment requirements in 40 CFR Part 268.

* The Director identifies principal hazardous constituents as constituents that pose a risk that is substantially higher than the cleanup levels or goals at the site. Once designated, these principal hazardous constituents would be subject to the treatment standards. For carcinogens, the Agency generally sets site-specific risk goals for final cleanup within the risk range of 10^{-4} to 10^{-6}, with 10^{-6} being the point of departure. Therefore, concentrations in CAMU waste that pose potential risks at or above 10^{-3} will typically define principal hazardous constituents. In the rare cases where the final cleanup goal for the site falls at the upper end of the risk range (e.g., at 10^{-4}), concentrations in CAMU waste at or above the 10^{-3} level should still be generally established as defining principal hazardous constituents.

* Constituents posing a risk of 10^{-3} or greater, or 10 times the reference dose or greater, will generally be identified by the Director as principal hazardous constituents. Concentrations above, but near the 10^{-3} potential risk level would be looked at closely in light of assumptions that underlie the 10^{-3} determination (e.g., their chemical characteristics and site conditions) prior to determining whether they were principal hazardous constituents.

    - For example, if a constituent posed risks close to a 10^{-3} level, based on conservative default assumptions (e.g., promulgated state default tables or generic assumptions used to determine bioavailability), and the underlying assumptions are not applicable at the site in question, the Director could determine that the constituents should not be designated as principal hazardous constituents.

    - The general approach for designating principal hazardous constituents is qualified by the phrase, "The Director may also designate other constituents as principal hazardous constituents...," because there may be other constituents that meet the standard (i.e., that pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site). For example, the Director could also determine that constituents posing risks less than 10^{-3} are principal hazardous constituents, such as a constituent posing 10^{-4} potential risk that is highly mobile, at a site where protection of groundwater is an especially significant issue.

* As a general principle, in situations where constituents in soil pose a significant potential threat through the groundwater pathway (e.g., based on fate and transport modeling) and the soil is excavated for disposal in a CAMU, the Director should strongly consider whether to designate such constituents as PHCs if they are not otherwise designated. In determining the appropriateness of this designation, the Director could consider a range of site-specific factors, including location of the CAMU, nature of the waste and constituents, how the waste will be managed and beneficial use of groundwater.

* The above approach to principal hazardous constituents (i.e., emphasizing risks from toxicity) does not mean that only the listed factors could be used to determine whether constituents meet the principal hazardous constituent standard (i.e., constituents that pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site). Other site-specific factors, such as ecological concerns, constituent

mobility, or potential risks posed by dermal contact, might, on a site-specific basis, be weighed in identifying principal hazardous constituents.

* The principal hazardous constituent approach compares risks posed by the waste to the cleanup levels or goals established at the site. This approach would make use of the process typically used by EPA or the authorized state for establishing cleanup levels or goals at a site. The comparison would assume direct exposure and consider reasonably anticipated land use (which could be residential or non-residential). Fate and transport would only be considered for assessing the migration of constituents from waste into groundwater or air, for the purpose of determining the risk posed by direct exposure to the groundwater or inhalation.

* In determining which constituents are "principal hazardous constituents," the Director must consider all constituents that would be subject to Part 268 treatment standards if not placed in a CAMU. This means: for listed sludges, "regulated hazardous constituents" (see §268.40, Table "Treatment Standards for Hazardous Wastes"); for characteristic wastes, all "underlying hazardous constituents" (see §268.40(e), §268.2(c)); for soil, "constituents subject to treatment" (see §268.49(d)).

III Treatment Standards

Location: probably after or as a modification to §264.552(e).

Treatment standards for waste placed in CAMUs other than temporary CAMUS. Waste that the Director determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph (a) or (b) below:

(a) Treatment standards for wastes placed in CAMUs.

(1) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by paragraph (3) of this section.

(2) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by paragraph (3) of this section.

(3)When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in 40 CFR §268.48 Table UTS.

(4) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or

reactivity, the waste must also be treated to eliminate these characteristics.

(5) For debris, the debris must be treated in accordance with 40 CFR §268.45 or by methods or to levels established under paragraph (a) or (b) of this section.

(b) Adjusted standards. The Director may adjust the treatment level or method established in (a) to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

1) the technical impracticability of treatment to the levels or by the methods established by (a);

2) the levels or methods established by (a) would result in concentrations of hazardous constituents that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

3) the views of the affected local community on the treatment levels or methods for the site under (a), and, for treatment levels, the treatment methods necessary to achieve these levels;

4) the short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods established by (a);

5) the long-term protection offered by the engineering design of the CAMU and related engineering controls:

(A) where the treatment standards in (a) are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(B) where cost-effective treatment has been used, or where, after review of appropriate treatment technologies, the Director determines that such treatment is not reasonably available, and:

1) the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units, or

2) the principal hazardous constituents in the treated wastes are of very low mobility, or,

3) where wastes have not been treated and the principal hazardous constituents in the wastes are of very low mobility, (i) the CAMU meets the liner standards for new, replacement, or laterally expanded CAMUs (i.e., those in the amendments to §264.552(e) in this discussion paper) or (ii) the CAMU provides substantially equivalent

protection.

(c) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(d) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Director may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

* Under (c), the requirement to complete treatment within "a reasonable time" after placement in a CAMU would be made in the context of the remedy selected for the waste. The Agency would expect treatment to be completed within months or years, not decades, except in very unusual circumstances.

* EPA would take comment on the appropriateness of using leaching tests other than the TCLP for assessing whether 90% reduction has been met for metals under (a)(2).

* Adjustment factor #1 would include the concepts of the current "unachievable" LDR variance (§268.44(h)(1)) and the "technically inappropriate" variance (§268.44(h)(2)(i)), as well as the more traditional concepts of technical impracticability (technically infeasible or inordinately costly).

* Adjustment factor #2 would allow for adjusting treatment up or down, if cleanup levels developed for the site are significantly higher or lower than the levels required under (a). When applying the adjustment factor, comparisons would be to levels (either established site-specifically or promulgated under state or federal law) that assume there is direct exposure of a receptor to the constituents. Site-specific cleanup standards are typically derived after consideration of factors that influence the risk potential at the site, including fate and transport considerations (e.g., in setting levels in soils that are protective of groundwater), distinctions between residential, industrial and other types of land use, and location of potential receptors. However, protection offered by the engineering of the CAMU itself would not be included in the calculation of adjusted treatment standards. Adjustment #2 would include the concepts of the current "site-specific minimize threat" LDR variance (Section 268.44(h)(3)).

* With respect to adjustment factor #5(A), some treatment technologies will "substantially," but not precisely, attain 10 x UTS or 90% treatment of all principal hazardous constituents in the waste. Where the mobility of the constituents is very low, on a site-specific basis, it can be appropriate to consider that the "substantially met" treatment is protective of human health and the environment. For example, the most appropriate technology at a site for organic contaminants that have low migration potential (e.g., certain polyaromatic hydrocarbons) might be biodegradation. This technology might come close to, but not achieve, 10 x UTS.

Given that the contaminants have a low migration potential, the Director could assess site-specific factors that affect mobility, including the geologic setting, precipitation and evaporation, and make the determination that the CAMU would provide long-term protection of human health and the environment. In another example, the treatment standards would be substantially met where the overwhelming majority of constituents have been treated to meet the treatment standards, but a very few immobile constituents do not meet the standards.

* For many waste streams with multiple constituents, treatment can be analytically assessed by measuring the concentrations of a subset of constituents that are determined site-specifically. This "surrogate" approach is commonly used in cleanups, taking into account such factors as characteristics of the waste, ability to analyze and which constituents within groups with similar treatment properties are most difficult to treat (these are generally the ones to focus on).

IV Design Standards

Location: probably after or as a modification to §264.552(e).

CAMUs, other than temporary CAMUs, into which wastes are placed must be designed in accordance with the following:

(a) Liners.

(1) Unless the Director approves alternate requirements under paragraph (2), CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of this section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1x10-7 cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

(2) Alternate Requirements. The Director may approve alternate requirements: (i) if the Director finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in paragraph (1); or (ii), if the CAMU is to be established in an area with existing significant levels of contamination, and the Director finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

(b) Cap.

(1) At final closure of the CAMU, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in (2):

(A) Provide long-term minimization of migration of liquids through the closed unit;

(B) function with minimum maintenance;

(C) promote drainage and minimize erosion or abrasion of the cover;

(D) accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(2) The Director may determine that modifications to (1) are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(c) CAMUs into which wastes are placed with constituent levels below remedial levels or goals applicable to the site do not have to comply with (a),(b), [groundwater monitoring requirements] or [provisions for temporary CAMU design standards].

Groundwater Monitoring and Corrective Action -- Modifications to existing language in CAMU rule in *italics*:

§264.552(e) The RA shall specify, in the permit or order, requirements for CAMUs to include the following:
(3) Requirements for ground water monitoring *and corrective action* that are sufficient to:
(i) Continue to detect and to characterize the nature, extent, concentration, direction and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU;
(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; *and*
(iii) Require notification and corrective action, as necessary to protect human health and the environment, for releases to groundwater from the CAMU.

* The approach in provision (c) ("CAMUs into which wastes are placed with constituent levels below remedial levels or goals applicable to the site do not have to comply with (a) or (b)") would allow wastes with contaminant concentrations that are protective of human health and the environment to be placed on the ground without engineering controls. This approach is consistent with the Agency's "contained-in" policy.

* The liner standard contains a provision allowing the Director to approve alternate designs that are determined to be at least as effective at preventing migration of any hazardous constituents into the ground or surface water. This provision is necessary to provide flexibility for designs that take into account local factors, including state design protocols and availability of construction materials. In addition, flexibility in liner design is also needed for CAMUs that are established at certain highly contaminated facilities. For example, at some highly contaminated facilities where contamination is pervasive throughout the subsurface, and where groundwater pump and treat is predicted to be necessary for hundreds of years, a liner to reduce migration of constituents from the CAMU into the more highly contaminated subsurface would not add a meaningful additional level of protection and would not be the best use of remediation resources.

* Groundwater monitoring and corrective action standards are general performance standards; detailed specifications or performance standards would be included in the permit or order, based on site-specific information and conditions.

V Temporary CAMUs

CAMUs into which wastes are placed for storage or for treatment only must be approved under the CAMU requirements (§264.552); however, the treatment requirements in §264.552(e) would not apply for the limited period while wastes are in the temporary unit. The design, operating and closure standards in §§264.552(c), 264.552(e)(3) and 264.552(e)(4) would be replaced by the following design, operating and closure standards in the staging pile regulations: §§264.554(d); 264.554(e); 264.554(f); 264.554(h); 264.554(i); 264.554(j); 264.554(k).

* Although the treatment requirements in §264.552(e) would not apply, the Director would not be prevented from requiring treatment in a temporary CAMU; nothing in this language would prevent the Director from requiring treatment for waste in a temporary CAMU as part of the overall CAMU or remedy decision.

* Temporary CAMUs that operate pursuant to the above-referenced design, operating and closure standards in the staging pile regulations could only operate for two years, except when granted an extension (see §264.554(d)(1)(iii) and §264.554(i)).

* Temporary CAMUs that will operate for a period that exceeds two and a half years would be subject to the liner and groundwater monitoring requirements (including corrective action) for permanent CAMUs. The authorizing mechanism for the CAMU (i.e., permit or order) would specify the time limit for the CAMU. The regulations would provide that this time limit could be no longer than necessary to achieve a timely remedy selected for the waste. The preamble would state the Agency's general expectation that storage or treatment activities in such non-permanent CAMUs would be completed within years not decades, except in very unusual circumstances.

VI CAMU Omnibus Provision

Notwithstanding any other provision of this section, the Director may impose additional requirements as necessary to protect human health and the environment.

* Where the omnibus finding is made, this provision would enable the Director to impose requirements relating to any element of CAMUs, including: requiring additional treatment of PHCs beyond the minimum standards; requiring additional engineering or monitoring specifications; and prohibiting specific wastes from inclusion in the CAMU.

VII Grandfathering

The rule would "grandfather" all existing, approved CAMUs, and those that are substantially in the approval process. Rule would provide that existing CAMUs and those with substantially complete applications (and order equivalents) submitted within 90 days after publication of the proposed rule would be grandfathered (i.e., remain subject to the current standards for the life of the CAMU). CAMU waste, activities and design would not be subject to the new standards as long as the waste, activities, and design remain within the general scope of the grandfathered CAMU.

VIII Public Participation

Replace existing §264.552(f) with:

§264.552(f): The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under [x] to the treatment standards in [x].

* Public involvement in the corrective action program is currently being discussed as part of EPA's RCRA Cleanup Reforms. Public participation in the CAMU process will be informed by this initiative. In addition, EPA will take comment on whether to apply the RCRA enhanced public participation regulations (60 FR 63417, 12/11/95) to CAMU decisions.

The following represents the general approach that the Agency intends to propose for implementing state authorization of the CAMU amendments. The following language is not part of the CAMU settlement agreement.

State Authorization

States authorized for CAMU rule: Goal would be to ensure that such states apply for and obtain authorization for rule amendments (which will be promulgated pursuant to HSWA) within a reasonable time frame, while allowing them to implement the new standards in lieu of EPA in the interim.

* Interim authorization by rule. EPA would propose that State programs that are able and willing to use amendments as guidance while they apply for and await final authorization would be "substantially equivalent" to the federal CAMU program and thus would obtain interim authorization by rule (assuming the state does not have unresolved audit law issues) to implement the amendments during that period.

* The interim authorization approach would be proposed in the CAMU proposal, with the intent that interim authorizations would become effective on the same day that the CAMU amendments become effective. The rule would contain a sunset provision – states that do not obtain final authorization within three years would lose their interim authorization. EPA would then implement the CAMU amendments in such states.

* States that do not wish to obtain interim authorization in accordance with the above (i.e., states that are not able and willing to use the amendments as guidance) could take advantage of the expedited authorization approach designed for states that are authorized for corrective action but not the CAMU rule (see below).

States authorized for corrective action, but not CAMU: Goal would be to create an expedited approach to authorizing such states for the CAMU rule.

* Streamlined application requirements: Rule would reduce the current authorization application requirements (40 CFR §271.21) to revised Attorney General's statement of authority and submission of relevant authorities. This would eliminate requirements for revised program description and revised MOA.

* In addition, Agency would make authorization of such states for the CAMU rule a high priority. Where states incorporate CAMU rule by reference or adopt it verbatim, EPA, upon

receipt of an application, would immediately proceed to publish a notice of a direct-final[1] rule providing for final authorization (or, in some cases, interim authorization). An exception to this policy would be where in the Region's judgment known issues with the existing program greatly affect the program's prospects for authorization. Examples of such issues would be questions regarding a state's enforcement authority (e.g., audit law issues) or capability (e.g., resource issues). For states that do not incorporate by reference or adopt verbatim, Regions would be directed to act as quickly as possible to get to final authorization.

* This approach would only be available where the program seeking authorization is the same program that has been authorized for corrective action.

[1]Under a "direct-final" rulemaking approach, the Agency publishes notices of proposed and final rules simultaneously. If the Agency does not receive significant comments on the proposal within a specified period (typically 60 days), the final rule takes effect. If the Agency does receive significant comment during that period, the Agency withdraws the notice of final rule before it takes effect.