DRAFT PREAMBLE FOR FINAL HWIR-MEDIA RULE

Includes redline/strikeout markings indicating changes made to the preamble at the request of EPA during review by the Office of Management and Budget September 8, 1998

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 270 and 271

[FRL-5460-4]

RIN 2050-AE22

Hazardous Remediation Waste Management Requirements (HWIR-media)

Agency: Environmental Protection Agency (EPA).

Action: Final Rule.

Summary:

What major changes does this rule make?

As part of ~~the President's~~ President Clinton's March 1994 environmental regulatory reform initiative, the United States Environmental Protection Agency (EPA) is ~~finalizing~~ issuing new ~~regulations~~ requirements for Resource Conservation and Recovery Act (RCRA) hazardous remediation wastes ~~that are~~ treated, stored or disposed of during cleanup actions. ~~The four main changes to existing regulatory requirements are:~~ These new requirements make five major changes. They -

- Make permits for treating, storing and disposing of remediation wastes faster and easier to obtain;
- Provide that obtaining these permits will not subject the owner and/or operator to facility-

wide corrective action; ~~1) streamlined permits for treatment, storage or disposal of hazardous waste generated during cleanup that will be faster and easier to obtain than traditional RCRA permits, and that do not require facility-wide corrective action,~~

- Create a new kind of unit called a "staging pile" that allows more flexibility in storing remediation waste during cleanup; ~~2) provisions for a new kind of unit called a "staging pile" that allows more flexibility for the storage of remediation waste during cleanup than is currently available under the RCRA Subtitle C requirements,~~
- Exclude dredged materials from RCRA Subtitle C if they are managed under an appropriate permit under the Marine Protection, Research and Sanctuaries Act or the Clean Water Act; and ~~3) an exclusion from RCRA Subtitle C for materials dredged under permits issued under the Marine Protection, Research and Sanctuaries Act or the Clean Water Act to reduce confusion and dual regulation of dredged materials, and~~
- Make it faster and easier for States to receive authorization when they update their RCRA programs to incorporate revisions to the Federal RCRA regulations. ~~4) streamlined authorization procedures for States seeking revisions to their authorized RCRA program to make it faster and easier for States to be authorized, and therefore able to implement, revisions to the Federal RCRA regulations.~~

~~These specific provisions were proposed~~

What is the recent history behind these changes?

On April 29, 1996, ~~in the proposal titled~~ EPA proposed these provisions as part of "Requirements for Management of Hazardous Contaminated Media." ~~which is commonly referred to as the~~ That proposal, also known as the "Hazardous Waste Identification Rule for

Contaminated Media (HWIR-media)," ~~That proposal covered a broad spectrum of potential reforms to the regulations of remediation waste.~~ included a broader range of potential reforms than is included in today's rule. ~~In today's notice, EPA is finalizing the four sets of provisions specified above. Also, EPA finalized the provisions for land disposal restrictions (LDR) treatment standards for hazardous soils that contain listed or hazardous waste or exhibit a hazardous characteristic (from the HWIR-media proposal) in the "Phase IV" rule (63 FR 26556 (May 26, 1998)).~~ EPA is not finalizing those broad reforms, but only the requirements listed above, and the provisions for treatment standards for hazardous soils which EPA finalized in the Phase IV final rule (63 FR 28556 (May 26, 1998)). EPA is deferring action on the Treatability Sample Exclusion Rule which ~~EPA~~ the Agency requested comments on expanding in the HWIR-media proposal at 61 FR 18817. EPA is withdrawing all other provisions of the HWIR-media proposal, including the proposal to withdraw the CAMU rule. ~~Because the provisions finalized today, and in the Phase IV rule, would not adequately replace the flexibility currently provided by the CAMU rule, the Agency is not withdrawing the CAMU rule.~~

Dates: These final regulations are effective on **[insert date 6 months after date of publication in the FEDERAL REGISTER]**.

Addresses: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-98-MHWF-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is

recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

For Further Information Contact:

For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

For more detailed information on specific aspects of this rulemaking, contact Michael Fitzpatrick, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308-8411, fitzpatrick.mike@epamail.epa.gov.

Supplementary Information:

The index and supporting materials are available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/id/hwirmdia.htm

FTP: ftp.epa.gov

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer

Outline

The information presented in this preamble is organized as follows:

- §§ 264.552 ans 264.553

B. Remediation waste – changes to the existing definition

C. Remediation waste management site and facility – new requirements for remediation waste management sites

- *Remediation waste management sites*

  - EPA changed the term from "media remediation site" in the proposal to "remediation waste management site" in the final rule

  - EPA has created different requirements for remediation waste management sites than for facilities managing "as-generated" hazardous wastes

  - Differences between the proposed definition of media remediation site and the final definition of remediation waste management site

  - Remediation waste management sites are not subject to facility-wide corrective action

  - Remediation waste management sites are excluded from only the second part of the definition of facility

- *Facility*

D. Staging pile – a new kind of unit

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  - Differences between the proposed definition of remediation pile and the final definition of staging pile

E. Miscellaneous unit – an edit to the existing definition

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- The differences between a RAP and a traditional RCRA permit

- Some advantages of a RAP compared to a traditional RCRA permit

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- Provisions from the proposal that are not included in the final rule

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- A description of the requirements
- Commenters requested more flexibility

P. The importance of public involvement in the RAP process

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- A description of the requirements
- Comments on the proposed requirements

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1)

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C. Deferral of Petroleum Contaminated Media and Debris from Underground Storage Tank Corrective Actions

D. Hazardous Waste Identification Rule (HWIR-waste)(May 20, 1992, and December 21, 1995)

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D. Executive Order 12875: Enhancing the Intergovernmental Partnership

E. Regulatory Flexibility Act

F. Paperwork Reduction Act

G. National Technology Transfer and Advancement Act

I. Overview Information

A. Why do this rule and preamble read so differently from other regulations?

Today's regulatory language and accompanying preamble are written in a "readable ~~regs~~ regulations" format. The authors tried to use active rather than passive voice, plain ~~English~~ language, a question-and-answer format, the pronouns "we" for EPA and "you" for the owner/operator (in the regulatory text), and other techniques to make it easier for readers to find and understand the information in today's rule and preamble.

This new format is part of the Agency's ongoing efforts at regulatory reinvention, and may be ~~unusual~~ unfamiliar to readers as it looks very different from the existing regulatory text of the Parts affected by today's rule. However, the Agency believes that this new format will increase readers' ~~ability~~ abilities to understand the regulations, which should then increase compliance, make enforcement easier, and foster better relationships between EPA and the regulated community.

~~It is important to understand that~~ All of the requirements found in today's final regulations, including those set forth in table format, constitute binding, enforceable legal requirements. The plain ~~English~~ language format used in today's final regulations may appear different from other rules, but it establishes binding, enforceable legal requirements ~~like~~ just as those in the existing regulations.

B. What law authorizes this rule?

These regulations are finalized under the authority of sections 2002(a), 3001, 3004, 3005, 3006, 3007 and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 [RCRA], as amended by the Hazardous and Solid Waste Amendments of 1984 [HSWA], 42 U.S.C. §§6912(a), 6921, 6924, 6925, 6926, 6927 and 6974.

II. Background Information

A. What problems does today's rule address?

Currently, hazardous wastes managed during cleanup are generally subject to the same RCRA Subtitle C requirements as newly generated hazardous wastes. Often those Subtitle C requirements are not appropriate for the cleanup scenario, as described below.

Response-oriented programs have different objectives and incentives than prevention-oriented programs

Since 1980, ~~the Environmental Protection Agency (~~EPA~~)~~ has developed a comprehensive regulatory framework under Subtitle C of RCRA ~~that governs the~~ for ~~identification~~ identifying, ~~generation~~ generating, ~~transportation~~ transporting, ~~treatment~~ treating, ~~storage~~ storing and ~~disposal~~ disposing of hazardous wastes. The RCRA program is generally considered prevention- rather than response-oriented. The regulations center around two broad objectives: to prevent releases of hazardous wastes and constituents through a comprehensive and conservative set of management requirements (commonly referred to as "cradle-to-grave management"); and to minimize the generation and maximize the legitimate reuse and recycling of hazardous wastes. However, in the remediation programs, EPA wants to develop a regulatory regime that encourages people to cleanup contaminated areas thereby generating potentially large volumes of

hazardous waste.

The RCRA regulations constitute minimum national standards for ~~the management of~~ managing hazardous wastes. With limited exceptions, they apply equally to all hazardous wastes, regardless of where or how generated, and to all hazardous waste management facilities, regardless of how much government oversight any given facility receives. ~~In order~~ To ensure an adequate level of protection nationally, the RCRA regulations have been conservatively designed to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies. This causes remediation activities to be subject to conservative, and often inappropriate requirements. For example, all waste piles must have a leachate collection and removal system under § 264.251(a)(2). This is appropriate when highly concentrated wastes will be stored in a pile for an extended time, but may not be necessary for less-concentrated wastes, or shorter-term activities, or cleanup actions when the level of oversight is high. However, to account for any activities that may take place nationally, EPA wrote the regulations conservatively to require all waste piles to comply with these requirements, even when they will contain less-concentrated waste for a short time. Nationally applicable requirements must be written in this manner to provide protective requirements for the highest risk activities that the regulations allow.

As opposed to requirements designed for on-going waste management, remediation activities often involve less-concentrated wastes, one-time activities, and shorter-term activities. Remediation activities are also conducted under close EPA or State oversight. However, the current regulations do not allow EPA or the State to modify the requirements for piles, or many other Subtitle C requirements, to make them more appropriate for the specific circumstances of

the remediation taking place.

In ~~the course of~~ administering current RCRA regulations for hazardous waste generated during cleanup, EPA and States have recognized fundamental differences in both incentives and objectives for prevention- and response-oriented programs. In prevention-oriented programs, the regulations require taking appropriate precautions against causing contamination before an activity takes place, such as the regulations that require liners and leachate collection systems. Also, because the regulations provide an incentive to minimize waste production, from the beginning, the activity is planned and managed to carefully control the appropriate factors such as amount of waste produced, concentrations, and handling practices to prevent unacceptable situations such as releases. However, in ~~the administration of~~ administering remedial programs such as Superfund and the RCRA Corrective Action program, EPA and the States ~~are~~ already ~~faced with~~ face an unacceptable situation (contaminated sites) that must be remedied. Response-oriented programs must address already existing problems. Response-oriented programs cannot pre-determine the location of the contamination, but must respond where contamination has already occurred, which may be close to sensitive ecosystems or populated areas. Response-oriented programs cannot control the volumes or concentrations of remediation wastes, but must manage what wastes have already been released into the environment in varying volumes, concentrations and matrices. Often the site-specific situations facing response-oriented programs make waste management difficult, such as complex matrices and combinations of constituents of concern, or concerns over on-site treatment or disposal units to manage the wastes that must be cleaned up.

In a prevention-oriented system, if the community objected to building new on-site units,

the facility could decide not to engage in business practices that would generate the waste that would need to be managed. In the response-oriented situation, however, the facility (or the regulatory agency) must deal with existing contamination, and must find an acceptable response. ~~while operating within the technical and practical realities of the site.~~

Also, remedial actions generally receive intensive government oversight, and remedial decisions are made by a State or Federal Agency only after they thoroughly investigate site-specific conditions ~~have been thoroughly investigated~~. In contrast, prevention-oriented hazardous waste regulations are generally implemented independently by facility owner/operators through ~~compliance~~ complying with national regulatory requirements.

LDRs, MTRs, and permitting raise problems when applied to remediation wastes

In the HWIR-media proposed rule, EPA identified the application of three RCRA requirements to remediation wastes as the biggest problems to address; Land Disposal Restrictions (LDRs), Minimum Technological Requirements (MTRs), and permitting. ~~EPA described these problems in great detail in the HWIR-media proposal, 61 FR 18780.~~

The LDRs (which appear in 40 CFR Part 268) generally prohibit land disposal (or "placement" in land-based units) of hazardous wastes until the wastes have met the applicable treatment standards. ~~limit the options for placement of wastes on the land. This causes problems for temporary storage of remediation wastes prior to on-site treatment, or in order to accumulate a sufficient volume of remediation waste to ship off-site in a cost-effective manner, which in turn discourages cleanup.~~ Often this placement is appropriate and desirable when managing remediation wastes to excavate them from their current locations, and temporarily store the wastes before on-site treatment, or to excavate the wastes and accumulate enough volume to ship

off-site cost effectively. By not allowing temporary storage and accumulation in land-based units, the LDRs can be a strong disincentive to excavating and managing remediation waste. The staging pile provisions of today's final rule address this issue by allowing temporary storage and accumulation of remediation wastes in a staging pile without being subject to LDR.

Another example of the problems with LDRs in the cleanup scenario is that contaminated media are often physically quite different from as-generated process wastes. Contaminated soils often contain complex mixtures of multiple contaminants and are highly variable in their composition, handling, and treatability characteristics. For this reason, ~~treatment of~~ treating contaminated soils can be particularly complex, involving one or sometimes a series of custom-designed treatment systems. It can be very difficult to treat contaminated soils to the LDR treatment levels. The parts of the HWIR-media proposal that addressed this issue have been finalized in the LDR Phase IV rule (63 FR 28556 (May 26, 1998)).

~~Finally,~~ The MTR requirements were designed as preventative standards for wastes generated through industrial processes. They were not designed for the remedial context. ~~for long-term operating units, not short-term units used for one cleanup only.~~ For example, under 40 CFR Subpart F, surface impoundments, waste piles, and land treatment units or landfills must have specific detection, compliance monitoring programs, and corrective action programs for potential groundwater contamination from the unit. These are appropriate preventative requirements for units managing process wastes. However, many cleanup actions involve short-term placement of remediation wastes into a waste pile, and all of these requirements may not be necessary. ~~Therefore, some of these requirements are overly burdensome for short-term cleanup activities.~~ The staging piles provisions of today's rule address~~es~~ this issue by allowing the

Director to determine appropriate design criteria for the staging pile based on the site-specific circumstances such as the concentration of the wastes to be placed in the unit and the length of time the unit will operate. EPA also explained in the preamble to the CAMU rule additional reasons why LDR and MTR requirements can be counterproductive when managing remediation waste as opposed to as-generated process wastes. To read about these additional reasons, see 58 FR 8658 (8659-8661)(February 16, 1993).

Finally, another area creating roadblocks is ~~the~~ permitting ~~area~~. ~~for example,~~ The time-consuming process for obtaining a RCRA permit can delay cleanups, thereby delaying the environmental and public health benefits of cleaning up a contaminated site. For example, the traditional RCRA permitting process requires the facility owner/operator to submit a great deal of information on activities at the facility to EPA or the State, and the permit must include terms and conditions to protect against any improper waste management practices over the long-term active life of an operating facility. Because of the large volume of information submitted, these permits are huge documents and approval often takes several years. However, in the remedial scenario, cleanup activities are generally a one-time project; once the cleanup is completed and the remediation waste is properly treated and disposed, then the activities are completed. Also, these activities are limited to addressing the contamination at the site, and therefore are often more limited in scope than the operating practices of a facility that is engaged in on-going waste treatment, storage and disposal. To overcome the limitations discussed above from traditional RCRA permits, the new Remedial Action Plans (RAPs) requirements in today's rule streamline the process for receiving a permit for treating, storing and disposing of remediation wastes, and require the facility owner/operator to submit significantly less information than for a traditional

RCRA permit. However, the information submitted for a RAP application and RAP terms and conditions must be sufficient to ensure proper waste management of the remediation wastes involved during the life of the cleanup activities.

~~Also, the requirements for facilities~~ Furthermore, a facility seeking a traditional RCRA permit to manage remediation wastes on-site must ~~to conduct investigations~~ investigate and ~~cleanups~~ cleanup ~~of~~ their entire facility (facility-wide corrective action). This requirement can deter potential cleanups from happening at all. For instance, facility owners and operators may wish to clean up a small portion of their facility for any number of reasons, such as to avoid future liability, to free the property for sale or other uses, or because they simply wish to restore the environmental health of their property. However, they may not be willing to take on the burden of investigating and cleaning up their entire facility, when it is only a small portion they wish to voluntarily clean up, and they may be reluctant to conduct the cleanup under the RCRA corrective action program. Therefore, to encourage cleanups, under today's final rule, facilities that need a RCRA permit only to treat, store, or dispose of remediation wastes (remediation-only facilities) are not subject to the facility-wide corrective action requirement.

B. How has EPA tried to solve these problems in the past?

EPA has tried to solve these problems in the past through a series of regulations and policies; for example;

- ~~such as~~ the "Area of Contamination" ~~or "AOC"~~ (AOC) policy;
- the "contained-in" policy; and

- the regulations for Corrective Action Management Units (CAMUs), and temporary units.[1]

All of these regulations and policies help ~~with~~ alleviate some of the problems facing cleanups, but none ~~of these~~ have completely solved these problems. ~~This is more fully discussed in an~~ (See the October 1997 report by the United States General Accounting Office, "Remediation Waste Requirements Can Increase the Time and Cost of Cleanups."[2])

The AOC policy allows important flexibility for activities done within a contiguous contaminated area. For example, hazardous remediation wastes may be consolidated or treated *in situ* within an AOC without triggering the LDRs or MTRs. However, ~~it~~ the AOC policy does not address the permitting issues today's rule is addressing, nor does it address LDR and MTR for wastes removed from an AOC, or treated *ex situ*.

The contained-in policy defines when some contaminated media can be considered to no longer "contain" hazardous waste. When ~~a "contained-out"~~ EPA or an authorized State determines ~~determination is made~~ that media do not "contain" hazardous waste, ~~there is much substantial~~ flexibility for managing that media RCRA does not generally pose a barrier to remediation because permitting requirements, LDRs (generally), and MTRs do not apply to media that do not contain hazardous waste. However, the contained-in policy is limited ~~only~~ to media only, and does not provide any flexibility for other remediation wastes, nor does it ~~solve any problems~~ provide needed flexibility for highly concentrated media ~~wastes~~.

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[1] 61 FR 18780, 18782 (April 29, 1996), memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers, (March 13, 1996); 55 FR 8666, 8758-8760 (March 8, 1990); and 58 FR 8658 (February 16, 1993).

[2] Hazardous Waste: Remediation Waste Requirements Can Increase the Time and Cost of Cleanups, U.S. General Accounting Office, GAO/RCED-98-4, October 1997.

The CAMU and temporary unit rules provide much-needed flexibility for unit-specific standards at cleanup sites. CAMUs and temporary units are not subject to LDRs or MTRs. The requirements for these units are set on a site-specific basis, depending on site-specific factors such as the types of wastes being managed (for example, concentrations, volumes, other characteristics) and the period of time the unit will operate. However, ~~but~~ CAMUs and temporary units do not address any of the permitting issues that cause problems for remediation wastes.

Because each of these regulations or policies is limited in solving the problems inherent to managing hazardous remediation waste under the RCRA Subtitle C system, ~~Therefore,~~ EPA felt it was necessary to propose additional solutions ~~to these problems for remediation waste~~.

C. How did the proposed rule attempt to solve these problems?

EPA recognized a continuing need for further reforms than the ~~aforementioned~~ regulations and policies discussed above had provided, and yet knew that ~~such~~ these reforms would be controversial. In 1993, EPA convened a committee under the Federal Advisory Committee Act (FACA) to provide recommendations to EPA on how to make these reforms. The FACA Committee ~~was made up of~~ included representatives from environmental groups, regulated industry, the waste management industry, States, and EPA. The FACA Committee met numerous times between January 1993 and September 1994. EPA based the options in the April 29, 1996 HWIR-media proposal on the recommendations and discussions of the FACA Committee.

EPA presented several options for reforms in the HWIR-media proposal. EPA presented two comprehensive options (the Bright Line and the Unitary Approach), and requested comment

on sub-options and issues within those comprehensive options.

The "Bright Line" approach for contaminated media

The first comprehensive option, which formed the basis for the proposed rule, was the "Bright Line" option. The Bright Line option would have been limited to "contaminated media" only. Contaminated media was defined to include soils, groundwater, and sediments, but not debris, nor other remediation wastes such as sludges. The Bright Line option got its name from a "line" dividing more highly contaminated media from less contaminated media. That Bright Line was a set of constituent-specific concentrations based on the risks from those constituents. Media found to contain constituents above these concentrations would have remained subject to Subtitle C management requirements (however, the proposal requested comment on some potential modifications to those requirements), and media containing constituents below the concentrations would have been eligible for a determination that it no longer "contained" hazardous waste, thereby generally removing it from Subtitle C jurisdiction.

The determinations of ~~what~~ which media were and were not subject to Subtitle C requirements were to be documented in a Remediation Management Plan (RMP) approved by EPA or an authorized State. The RMP would have been an enforceable document ~~which~~ that would also have included any requirements for managing media below the Bright Line, and would have served as a RCRA Subtitle C permit for treatment, storage or disposal of media above the Bright Line. The RMP process would have been more streamlined than that required for RCRA permits obtained under the current regulations, and also, at ~~cleanup-only sites~~ remediation-only facilities, would not have required 3004(u) and (v) facility-wide corrective action, as is required for all ~~current~~ RCRA permits before today's rule.

Other options within the "Bright Line" approach

Other requirements that EPA proposed to modify were LDR treatment standards for soils that remained subject to Subtitle C requirements, standards applicable to on-site storage and/or treatment of cleanup wastes during the life of the cleanup, and State authorization requirements. New treatment standards would have applied to soils that remained subject to LDRs under the Bright Line ~~this~~ approach. EPA also proposed a new unit called a "remediation pile." Remediation piles could have been used temporarily without triggering LDRs and MTRs, for the on-site treatment or storage of remediation wastes subject to Subtitle C ~~without triggering LDRs and MTRs~~. States picking up any revisions to their RCRA programs (~~any revisions;~~ the proposal was not limited to the revisions to remediation waste management programs) could have followed new streamlined authorization procedures. Also, EPA ~~also~~ proposed to withdraw the CAMU regulations if the final HWIR-media rule would sufficiently replace the flexibility ~~that is~~ currently available under the CAMU rule.

Finally, EPA proposed ~~an exclusion~~ excluding dredged materials from Subtitle C ~~for dredged materials~~ if they were managed under permits issued under the Clean Water Act (CWA) or Marine Protection Research and Sanctuaries Act (MPRSA).

The "Unitary" approach – an alternative to the "Bright Line"

As an alternative to the Bright Line approach, EPA requested comment on the "Unitary Approach." ~~Under~~ The Unitary Approach~~,~~ excluded all remediation wastes (irrespective of the concentration of hazardous constituents in the waste and including non-media remediation wastes) managed under a Remedial Action Plan (RAP) (which was very similar to a RMP) ~~were excluded~~ from Subtitle C management requirements and made them subject to site-specific

requirements in the RAP.

Again, EPA requested comment on the two main comprehensive options, the Bright Line and the Unitary Approach, and on all the sub-issues, such as the proposed elimination of CAMUs, and the new requirements for remediation piles, LDR, RMPs and RAPs, dredged materials, and State authorization.

D. What general comments did EPA receive about the two major proposed options?

Some commenters supported the Bright Line option and thought it was appropriate to distinguish between highly contaminated media and media that were less contaminated, and to regulate them differently.

However, most commenters on the Bright Line option believed that the Bright Line would be too difficult to implement, and therefore should not be finalized. There were several elements of the Bright Line option that commenters were concerned about implementing. One concern was sampling to determine whether media was above or below the Bright Line. Concentrations of contaminants in environmental media typically are not heterogeneous, and it is difficult to make assumptions about the concentrations of large areas of contamination without taking many samples.

Another concern was ~~the differentiation~~ how to differentiate between media, debris, and other remediation wastes, such as sludges. Commenters stated that often these different types of remediation waste are all found at the same site and they will all need to be managed, and it would be unduly complicated to have to separate the different types of remediation wastes and manage them separately under separate regulatory requirements.

Also, commenters were concerned about the methodology that EPA used ~~for determining~~

to determine the Bright Line levels themselves. EPA received many specific comments on the proposed Bright Line constituent specific numbers, as well as the choice of which constituents were assigned Bright Line numbers.

~~On the~~ With regard to the Unitary Approach, many industry and State commenters supported the Unitary Approach, saying that the flexibility ~~of that this approach~~ would greatly streamline cleanups and allow more appropriate ~~decisions to be made regarding~~ decisions for managing remediation waste ~~management~~. These commenters emphasized that flexibility was needed so that States could develop cleanup programs with oversight and public participation requirements specific to the concerns, needs, and resources of individual States, and felt that the Unitary Approach most closely addressed those concerns. However, some commenters were concerned that the lack of any national requirements was too open-ended and would not guarantee protectiveness. Commenters were also concerned about the resources required for States and Regions to make site-specific determinations of the appropriate management requirements for remediation wastes at ~~every~~ each different site.

Finally, commenters had many specific comments on the elements of these options such as RAPs and RMPs, remediation piles, LDRs, etc. Major comments and EPA's responses are summarized under those more specific sections of this preamble, and all comments are answered specifically in the "response to comments" document for today's rule.

E. What did EPA decide to do~~, taking into consideration~~ after considering those comments?

EPA has ~~made a decision~~ decided to promulgate only selected elements of the HWIR-media proposal in today's rule, rather than go forward with a more comprehensive approach as

proposed. EPA plans to complement the elements finalized today by leaving the CAMU regulations in place, rather than withdrawing these regulations as proposed.

Although EPA conducted a lengthy outreach process before developing the HWIR-media proposal and ~~tried~~ made every effort to balance the concerns and interests of various stakeholder groups, ~~it is now clear after reviewing~~ public comment on the proposal makes it clear that stakeholders ~~have fundamental disagreements~~ fundamentally disagree on many remediation waste management issues.

EPA agreed with commenters' concerns that the Bright Line approach would be too difficult to implement, and that a Bright Line that would satisfy commenters who wanted the Bright Line levels to consist of very conservative~~, risk-based~~ levels would not ~~provide sufficient~~ sufficiently reform ~~to~~ the system to remove the existing barriers to efficient, protective remediation waste management ~~that currently exist~~. EPA has concluded that pursuing broader regulatory reform would be a time- and resource-intensive process that would most likely result in a rule that would provoke additional years of litigation and associated uncertainty. This uncertainty would be detrimental to the program and have a negative effect on ongoing and future cleanups. Based on these conclusions, the Agency has decided not to finalize either the Bright Line or the Unitary Approach, and recognizes that a purely regulatory response will not solve all of the remediation waste management issues that HWIR-media was designed to solve.

While EPA believes the elements finalized today~~, and~~ along with the retention of the ~~corrective action management unit~~ CAMU rule, will improve remediation waste management and expedite cleanups, the Agency is also convinced ~~recognizes~~ that additional reform ~~would significantly~~ is needed to expedite the cleanup program, especially to provide greater flexibility for

~~management of~~ non-media remediation wastes like remedial sludges, address certain statutory permitting provisions, and more appropriate treatment requirements for remediation wastes (for example, treatment that focuses on "principal threats" rather than all underlying hazardous constituents). Therefore, the Agency ~~will~~ continues to support appropriate, targeted legislation to address application of RCRA Subtitle C land disposal restrictions, minimum technological and permitting requirements to remediation waste and will continue to participate in discussions on potential legislation. If legislation is not forthcoming, the Agency may reexamine its approach to remediation waste regulation and may take additional administrative action.

The elements finalized in today's rule are:

- ~~1)~~ streamlined permitting for ~~treatment, storage or disposal~~ treating, storing and disposing of remediation wastes generated at cleanup sites that, among other things, ~~would~~ eliminates the requirement for facility-wide corrective action at ~~cleanup-only sites~~ remediation-only facilities;
- ~~2)~~ a variation on the proposed remediation piles, called staging piles, modified in response to public comments;
- ~~3)~~ a RCRA exclusion for dredged materials managed under Clean Water Act (CWA) or Marine Protection Research and Sanctuaries Act (MPRSA) permits; and
- ~~4)~~ streamlined procedures for State authorization~~, and the associated definitions~~.

EPA also finalized, in a separate notice (63 FR 28604 (May 26, 1998)), the ~~land disposal restriction~~ LDR treatment standards specific to hazardous contaminated soil that were proposed in the HWIR-media proposal. EPA is deferring action on the Treatability Sample Exclusion Rule, ~~which~~ that EPA requested comments on expanding in the HWIR-media proposal at 61 FR 18817.

At this time, EPA is withdrawing all other portions of the proposal, such as the proposal under the Bright Line option to distinguish between lower- and higher-risk contaminated media and give regulatory agencies the flexibility to exempt lower-risk contaminated media from RCRA requirements, and the proposal to withdraw the CAMU rule.

Existing areas of flexibility for ~~the management of~~ managing remediation waste, such as the contained-in and ~~area of contamination~~ AOC policies, and site-specific land disposal restrictions treatability variances, continue to be available.

III. Definitions Used in this Rule (§ 260.10)

Some terms defined in today's rule may be difficult to understand when discussed out of context of the rest of the rule; therefore, readers may wish to read the preamble sections on RAPs and staging piles before reading this section on definitions. ~~In order~~ To discuss related terms together~~, the~~ in this preamble, discussion of the definitions is not in alphabetical order ~~as~~ (which is how the terms appear in the rule language). The section ~~first~~ discusses:

- First the revised definition of "corrective action management unit" or "CAMU," then ~~discusses~~
- The definition of "remediation waste," then
- "remediation waste management site" and "facility," then
- "staging pile," then finally,
- "miscellaneous unit."

A. ~~Definition of~~ Corrective Action Management Unit (CAMU) ~~(40 CFR § 260.10) and~~ -- changes to the existing definition, and changes to the CAMU and temporary unit

regulations at ~~(sections~~ §§ 264.552(a), 264.553(a)~~)~~

Definition of CAMU

In today's final rule, the Agency has ~~made a revision to~~ revised the definition of CAMU, as well as ~~to~~ the CAMU and temporary unit regulations themselves. This revision clarifies ~~, to clarify~~ the Agency's interpretation of these provisions and ~~to accommodate the Agency's~~ accommodates EPA's new interpretation, promulgated today, that ~~cleanup-only~~ remediation-only facilities are not subject to ~~section 3004(u)'s~~ the facility-wide corrective action requirement under RCRA section 3004(u). (See discussion under the definition of remediation waste management site below.) Specifically, the Agency has added to both the CAMU definition (section 260.10) and sections 264.552 and 264.553 language providing that CAMUs and temporary units are not limited to facilities subject to RCRA §§ 3004(u) or 3008(h), but may also be approved ~~as well~~ at ~~remediation-only~~ other cleanup facilities, as well.[3]

The revised definition in today's rule reads as follows:

Corrective action management unit ~~or~~ (CAMU) means ~~either (1)~~ an area within a facility that ~~that is designated by the Regional Administrator under part 264 subpart S for the purpose of implementing corrective action requirements under § 264.101 and RCRA 3008(h), or (2) an area that is designated for the purpose of managing remediation wastes, by the Regional Administrator in the permit for a facility that is not subject to Part 264 Subpart S corrective action requirements. A CAMU shall only~~ is ~~be~~ used only for ~~the~~

[3] When using the term "remediation-only" facilities, EPA means facilities that require RCRA permits solely for the purposes of ~~conducting treatment, storage or disposal~~ treating, storing or disposing of remediation wastes due to cleanup at the facilities. EPA uses this term to distinguish these facilities from operating treatment, storage and disposal facilities that manage as-generated process wastes as part of ongoing facility operations.

~~management of~~ managing remediation wastes ~~pursuant to~~ for implementing corrective action or cleanup at the facility ~~(within the contiguous property under control of the owner or operator)~~.

~~The second part~~ ~~clause~~ ~~of the first sentence of the definition~~ ~~is an addition~~ ~~has been added to the existing definition of CAMU. The change~~ ~~allows regulatory agencies to approve~~ ~~clarifies that regulatory agencies may approve CAMUs~~ ~~under Remedial Action Plans, and other permits for the management of remediation waste~~ ~~at facilities that are not subject to § 264.101.~~

EPA is amending the definition of CAMU by deleting the parts of the definition that referred to corrective action authorities under § 264.101 and RCRA § 3008(h). This change will accommodate RAPs and permits for the management of remediation waste as defined in today's rule that are not subject to § 264.101 or RCRA § 3008(h). Also, ~~because the earlier definition created confusion about the circumstances under which a CAMU could be used. The earlier definition~~ the reference in this definition (as well as in the definition of remediation waste) ~~referred~~ to actions taken "for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h)" implied that EPA intended to restrict CAMU to these authorities. In fact, EPA ~~never intended~~ did not intend to restrict the CAMU (or the temporary unit) to wastes generated solely through specific RCRA regulatory mechanisms, or to cleanup wastes generated solely at RCRA treatment, storage or disposal facilities. ~~-- under this approach~~

For example, EPA anticipated that CAMUs or temporary units might ~~even have been prohibited~~ be used as applicable or relevant and appropriate requirements (ARARs) for the remediation of many CERCLA sites, especially where CERCLA remediation involves management of RCRA hazardous wastes. ~~at Superfund sites.~~ ~~Instead,~~ EPA tied its definition of

CAMUs and remediation waste to RCRA Federal authorities applicable to TSD's (~~i.e.~~ that is, 40 CFR Part 264.101 and RCRA section 3008(h)) because ~~it~~ the Agency developed the CAMU and temporary unit rules within that context -- ~~i.e.~~ that is, they were developed as Federal rules to implement corrective action at facilities subject to RCRA §§ 3004(u) or 3008(h). Yet, EPA also expected that the CAMU would be appropriate as ARARs at Superfund sites; at the Regional Administrator's discretion for purposes of remediation under RCRA section 7003 (even if not at a Subtitle C facility); and ~~, or~~ under ~~authorized~~ State authorities~~, and at State cleanup sites, where the State had a permit waiver provision comparable to Superfund's.~~ analogous to section 7003 or CERCLA (which provide a waiver from otherwise applicable State RCRA requirements).[4]

~~Today's rule particularly highlights the confusion over the scope of EPA's definitions, because it creates a~~

The revised definition of CAMU makes it clear that the CAMU is also available under RAPs and other permits ~~the new kind of RCRA permit created by today's rule~~ for remediation-only facilities that under the new interpretation in today's rule are not subject to 40 CFR Part 264.101 or RCRA § 3008(h). ~~Read narrowly~~

Without this change, the current definitions of ~~the~~ CAMU ~~or~~ and remediation waste might be interpreted to preclude the use of CAMUs and temporary units at remediation-only facilities operating under RAPs. Yet these facilities ~~were the very type~~ are clearly among the type of facilities for which CAMUs and temporary units would be beneficial -- that is, facilities at which remediation should be expedited and encouraged. ~~were developed.~~

[4] For a discussion of State permit waiver authorities, see the memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA to Regional Administrators, Regions I - X, EPA, (November 16, 1987) available in the docket to today's rule.

For this reason, EPA has ~~added a~~ removed the section ~~to~~ of the CAMU definition (and also parallel provisions in ~~to~~ the definition of remediation waste) ~~explicitly allowing~~ that appeared to limit CAMUs (and temporary units) ~~at permitted~~ to facilities ~~not~~ subject to § 264.101 or 3008(h) ~~-- that is, remediation waste management sites~~. This ~~clarification~~ change should eliminate any confusion over the scope of ~~the~~ CAMUs and remediation waste, and it is consistent with the central purpose of today's rule -- expediting cleanup at sites overseen by Federal and State cleanup authorities, whether these sites are within the corrective action universe, or whether they are "remediation-only" or "remediation waste management sites" where RCRA hazardous waste is being managed.

Without this change, the Agency's new interpretation that remediation waste management sites are not subject to 3004(u) corrective action requirements, which is intended to stimulate cleanups, would have had the unintended effect of eliminating the availability of two of the waste management options, CAMUs and temporary units, that were designed for the same purposes.

§§ 264.552 and 264.553

The removal of the language referencing activities performed under § 264.101 or RCRA 3008(h) from the definition of CAMU does not change the scope of CAMUs. EPA simply removed the language discussing authorities from the definition, and added it to the regulatory language for CAMUs and temporary units at §§ 264.552 and 264.553. EPA also added specific language clarifying that CAMUs and temporary units may be approved at permitted facilities that, under today's rule, are not subject to § 264.101. EPA believes these provisions are more appropriate in the regulatory text of the CAMU and temporary unit requirements instead of in the

definitions because they identify the mechanisms by which CAMUs and temporary units are approved, rather than define the scope of the unit itself. By including these authorities in the text of §§ 264.552 and 264.553, EPA is clarifying that CAMUs and temporary units are intended to implement corrective action consistent with the requirements of § 264.101 and 3008(h) requirements, as well as cleanup under today's RAPs, which do not require compliance with § 264.101. The mechanisms for approval of CAMUs and temporary units will be the permit and order procedures, and the RAP procedures. Of course, Federal and State authorities with permit waiver provisions may also use CAMUs, as discussed above and in the preamble to the CAMU rule at 58 FR 8658 (p. 8679)(February 16, 1993).

EPA is also adding language to §§ 264.552 and 264.553, and has included language in the new section § 264.554 created in today's rule, to specify that CAMUs, temporary units, and staging piles may only be used within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. EPA added this language because the Agency removed that limitation from the definition of remediation waste, as discussed below. EPA believes these restrictions are more appropriate in the regulatory text of the CAMU, temporary unit, and staging pile requirements instead of in the definitions.

EPA is retaining the current limitation that CAMUs and temporary units may only be used within the contiguous property under the control of the owner/operator, and creating the same limitation for staging piles created under today's rule. However, EPA believes that it may be advantageous in some cases to use CAMUs, temporary units, and staging piles at off-site facilities. Today's rule provides some relief for off-site management of remediation wastes, but does not allow off-site CAMUs, temporary units, or staging piles. EPA may reconsider the need

for and appropriateness of allowing off-site CAMUs, temporary units and staging piles in the future.

B. ~~Definition of~~ Remediation waste – changes to the existing definition

Under current regulations, the term "remediation waste" defines wastes that can be managed in a CAMU or temporary unit. Today's rule ~~uses~~ amends the ~~same~~ definition ~~(slightly amended)~~ for the same reason that EPA made the same change to the definition of CAMU -- to remove the limitation to wastes managed under § 264.101 and RCRA § 3008(h). The new definition retains the term's current use, and ~~to~~ makes the definition conform with the new RAPs and staging piles provisions by ~~specify those wastes that may be managed under a RAP and/or may be placed in a staging pile~~ not limiting remediation wastes to wastes managed under certain specific corrective action authorities. Wastes managed ~~pursuant to these~~ under the provisions of today's rule will be managed during the course of a wide range of cleanups conducted ~~pursuant to~~ under many different types of cleanup authorities.

~~However,~~ The existing definition of remediation waste (in § 260.10) might be read as limiting the term to wastes managed ~~pursuant to~~ under the RCRA corrective action cleanup authorities of 40 CFR Part 264.101 and RCRA § 3008(h). In the preamble to the proposed rule (61 FR 18836), EPA requested comment on a revised definition of remediation waste that eliminated the limitation to wastes "managed for the purpose of implementing corrective action requirements under §264.101 and RCRA section 3008(h)," and added that wastes from a "media remediation site" could be considered remediation wastes. Today's definition is based on this definition and reads as follows:

Remediation waste means all solid and hazardous wastes, and all media (including groundwater, surface water, soils and sediments) and debris ~~which~~ that contain listed hazardous wastes or ~~which~~ that themselves exhibit a hazardous characteristic and ~~that~~ are managed for ~~the purposes of~~ implementing cleanup. ~~Remediation wastes may originate only from within the contiguous property under the control of the owner or operator, but may include waste that has migrated beyond the facility boundary.~~

The Agency has made ~~three~~ two changes to the existing § 260.10 definition of remediation waste originally promulgated for ~~use in~~ the CAMU and temporary unit rules. The first change removes references to RCRA corrective action authorities, and the second change eliminates the restriction that remediation wastes may originate only from within the facility boundary. ~~The first and third change remove the two existing references to corrective action authorities.~~

The first reference that was eliminated ~~limited~~ defined remediation waste ~~to~~ as wastes "managed for the purpose of implementing corrective action requirements under §264.101 and RCRA section 3008(h)." ~~The second reference that was eliminated limited tied wastes that had migrated beyond the facility boundary to "waste managed in implementing RCRA sections 3004(u) and 3008(h)."~~ The ~~new~~ revised definition refers to wastes "that are managed for ~~the purposes of~~ implementing cleanup," ~~and to "waste that has migrated beyond the facility boundary"~~ without ~~limitations~~ specifying the authority under which ~~such wastes must be addressed~~ owner/operators must address these wastes. As mentioned above, the Agency specifically suggested ~~the first~~ this change in the preamble of the proposed rule (61 FR 18836) in a discussion of the Unitary ~~Approach, and the third second change is necessary to conform with~~

~~the first change~~.

No comments were submitted specifically on the definition of remediation waste, although several commenters expressed their views on the general issue of what materials should be subject to the proposed rule, which is the issue addressed by the definition of "remediation waste." For example, one commenter expressed support for the approach envisioned by the proposal, and finalized in today's clarification to the definition, stating that "the HWIR-media rule should be applied to any management of hazardous contaminated media (and further, to all remediation waste...), regardless of whether ~~such~~ this remediation is conducted under RCRA, CERCLA, or other State or Federal authority."

In view of the statements made by commenters expressing support for allowing the use of different State and Federal authorities, EPA continues to believe that the purpose behind the provisions finalized today -- to encourage cleanup by removing unnecessary regulatory barriers -- is best served by the broad definition finalized today.[5]

The second change has ~~reworded the requirement~~ removed the limitation that waste must originate from "within the facility boundary." ~~to instead read "within the contiguous property under the control of the owner or operator." This rewording makes it clear which part of the definition of facility EPA is referring to in this definition, because the definition of facility had two clauses.[6] Because EPA has removed references in the definition to the corrective action~~

[5] Many commenters on the proposal addressed the issue of the types of materials that should be eligible for the relief offered by the proposed rule -- most notably, whether relief should be provided for both contaminated media and hazardous wastes that are managed ~~for the purposes of~~ during cleanup (~~e.g.~~ for example, sludges that have not commingled with media). Because this issue was addressed differently under the various provisions of the proposed rule, these comments are addressed in the discussion of each specific provision finalized today.

[6] *Facility* is defined, as of today's rule, as: (1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist

~~authorities of § 264.101 and RCRA § 3008(h), which were a tie to the second part of the definition of facility (which applies to implementing corrective action under § 264.101 and RCRA § 3008(h)), EPA is today replacing the term facility with the exact language from the second part of the definition of facility.~~ This allows remediation waste managed at off-site locations, such as those permitted under § 270.230 to continue to meet the definition of remediation waste even though they are removed from the original site.

The changes made to the definition of remediation waste parallel ~~today do not result in any~~ changes ~~to the implementation of~~ in the definition of ~~the~~ CAMU, and changes to the CAMU and temporary units regulations at §§ 264.552 and 264.553 ~~rules~~. ~~Specifically, removal of the limitation in the definition that wastes must be "managed for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h)" does not remove that limitation from the CAMU and temporary unit rules -- those rules independently contain this limitation (see §§ 264.552(a) and 264.553(a)).[7] Thus, for purposes of CAMU/temporary unit implementation, the "cleanup" referred to in today's definition will necessarily be cleanup compelled by § 264.101 or 3008(h) (except, of course, where a CAMU or temporary unit is being used at a remediation-only facility that is not subject to RCRA's facility-wide corrective action requirements. For the purposes of implementing CAMUs and temporary units, the definition of~~

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of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them). (2) For the purpose of implementing corrective action under § 264.101, all contiguous property under the control of the owner/operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h). (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site does not constitute a facility for purposes of § 264.101, but is subject to corrective action requirements if the site is located within such a facility.

[7] Today, EPA is also modifying §§ 264.552 and 264.553 to allow implementation of CAMUs and temporary units under permits (including RAPs) at facilities that are not subject to § 264.101 and 3008(h) as discussed in today's preamble under the definition of CAMU.

~~CAMU and the regulations in §§ 264.552 and 264.553 contain the limitations on when these units may be used. (See discussion under the definition of CAMU above, and conforming changes to §§ 264.552 and 264.553.)~~

Commenters were concerned about the status of wastes that have migrated beyond the traditional RCRA "facility" boundary, and the need to include those wastes in remediation waste. Some commenters were concerned that, as proposed, ~~they~~ owners and operators would be required to obtain a RAP for on-site activities and a RCRA permit for off-site locations where wastes had migrated. Some were concerned that they would not be able to bring wastes that had migrated off-site back to the site for management; still others were concerned that they would be forced to manage wastes on-site even if it was not the most protective option. EPA has retained the inclusion of wastes that have migrated beyond the facility boundary by removing the clause that limited from where remediation waste could originate. ~~in the definition of remediation waste.~~ EPA expects this to resolve the concerns of these commenters.

Finally, it is important to stress two ~~important~~ points. First, is should be noted that remediation waste ~~only~~ includes only waste managed because of cleanup, and does not include wastes generated from on-going hazardous waste operations, which are commonly referred to as "newly generated," "as generated," or "process" wastes. When managed as part of a legitimate cleanup action, any (non-"as-generated") hazardous wastes (~~e.g.~~ for example, media, debris, sludges, or other wastes) are all remediation waste. Second, remediation waste includes both hazardous and non-hazardous solid wastes managed as a result of cleanup, including any wastes ~~that are~~ generated from ~~the treatment of~~ treating remediation wastes, (~~e.g.~~ for example, carbon canisters and sludges generated from groundwater pump-and-treat or soil vapor extraction

systems). Third, the changes made to the definition of remediation waste do not, in any way, change the scope of the CAMU and temporary unit regulations. EPA has replaced the limitation on contiguous property removed from this definition with a limitation in the CAMU and temporary unit regulations themselves at §§ 264.552 and 264.553. That same limitation also applies to staging piles created in today's rule.

C. ~~Definitions of~~ Remediation waste management site and facility – new requirements for remediation waste management sites

Remediation waste management sites

The final definition for remediation waste management site included in §260.10 in today's rule is:

> Remediation waste management site means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. ~~A remediation waste management site must be located in an area of contamination from which the remediation wastes originated or areas in close proximity to the contaminated area.~~ A remediation waste management site is not a facility ~~for the purpose of implementing~~ that is subject to corrective action under 40 CFR 264.101, but is subject to ~~such~~ corrective action requirements if the site is located in such a facility.

Traditionally, RCRA has focused on "facilities" ~~for purposes of~~ when applying hazardous waste regulations. These are generally properties where industrial operations manage hazardous wastes that they have generated, or where commercial operations or entities conduct hazardous

waste treatment, storage, and/or disposal operations ~~are conducted~~. For ~~purposes of implementing~~ corrective action~~s~~ under §3004(u) and (v) (implemented through § 264.101) and 3008(h), a facility was defined (see §260.10) as "all contiguous property under the control of the owner or operator" where hazardous wastes are managed.

In the proposal, EPA defined “media remediation site” as a new term that would apply to a location where certain remediation waste management activities were taking place, and might or might not include all or part of a pre-existing RCRA “facility.” EPA felt that it was important to differentiate between existing “facilities” and a new kind of site that would be eligible for the streamlined permits (Remedial Action Plans or RAPs) promulgated in today’s rule, and would be exempt from § 264.101 and certain other Part 264 requirements that are not necessary or appropriate for areas used solely to manage cleanup wastes.

EPA changed the term from “media remediation site” in the proposal to “remediation waste management site” in the final rule

EPA has replaced the term “media remediation site” with the more descriptive term “remediation waste management site.” Commenters generally supported the concept of a media remediation site, but the term “media remediation site” caused confusion for some, because “remediation site” implies an area that is being cleaned up, not, as is meant in this case, an area where hazardous remediation wastes are being managed. ~~For this reason, EPA has replaced the term “media remediation site” with the more descriptive term “remediation waste management site.”~~

Also, the proposed rule allowed only contaminated media to be exempted from Subtitle C requirements, and the word “media” in the title “media remediation site” was meant to emphasize

that the exemptions were only for contaminated media. In today's final rule, EPA is not exempting any wastes from Subtitle C, and all provisions of this final rule apply to all remediation wastes, so the term "media" is no longer needed in the definition of the site.

These are the reasons ~~why~~ EPA changed the term from "media remediation site" to "remediation waste management site." Changes to the definition of the proposed term are discussed later in this section.

EPA has created different requirements for remediation waste management sites than for facilities managing "as-generated" hazardous wastes

Throughout today's rule and the proposal, EPA has emphasized that, ~~in order~~ to stimulate cleanup, it is important to regulate remediation waste management activities differently from as-generated process waste management where appropriate. This definition of remediation waste management site allows EPA to apply requirements to remediation waste management activities that are more appropriate for the remediation scenario than the current requirements that, until today's rule, have applied to both remediation waste management and as-generated process waste management.

In today's rule, to facilitate prompt and protective treatment, storage, and disposal of hazardous remediation wastes, EPA has created three new requirements for remediation waste management sites that are different from those for other facilities:

~~First, in Part 270 Subpart H, EPA is today promulgating~~

- A new form of a RCRA permit for ~~the treatment, storage or disposal~~ treating, storing and disposing of hazardous remediation wastes (a RAP) that streamlines the permitting process for remediation waste management sites ~~in order~~ to allow cleanups to take place

more quickly (Part 270 Subpart H);

~~Second, today's rule includes~~

- Performance standards ~~(§ 264.1(j)) that apply to~~ for remediation waste management sites ~~in lieu of~~ that replace the detailed requirements in Part 264 Subparts B, C, and D (General Facility Standards, Preparedness and Prevention and Contingency Plans and Emergency Procedures) (§ 264.1(j)); and

~~Third, in the new §§ 264.1(j) and 264.101(d), EPA states that~~

- A provision excluding remediation waste management sites from RCRA § 3004(u)'s requirement for facility-wide corrective action ~~does not apply to remediation waste management sites~~ (§§ 264.1(j) and 264.101(d)).

As noted above, EPA believes it is appropriate to regulate facilities that manage as-generated process wastes and those that manage remediation wastes differently, and the designation of a remediation waste management site defines ~~where~~ when the new provisions unique to areas that manage remediation wastes will apply.

Differences between the proposed definition of media remediation site and the final definition of remediation waste management site

The definition of media remediation site in the proposal which, like today's definition of remediation waste management site, was used to define where reduced permitting requirements would apply, was:

"An area contaminated with hazardous waste that is subject to cleanup under State or Federal authority, and areas in close proximity to the contaminated area at which remediation wastes are being or will be managed pursuant to State or Federal remediation

authorities (such as RCRA Corrective Action or CERCLA). A media remediation site is not a facility for the purposes of implementing corrective action under 40 CFR 264.101, but may be subject to such corrective action requirements if the site is located within such a facility (as defined in 40 CFR 260.10)."

In response to the limitations to "contaminated areas" and "areas in close proximity," several commenters identified specific situations where those limitations might prevent owners and operators from conducting environmentally beneficial activities ~~to be conducted~~ under a RAP. These comments are addressed in today's rule under new § ~~270.97~~ 270.230, and the preamble discussion of that section instead of in today's definition.

EPA has removed from the proposed definition the requirement that limits media remediation sites ~~be limited~~ to areas subject to cleanup under State or Federal authority, and wastes managed ~~pursuant to~~ under State or Federal remediation authorities. EPA has always intended that today's rule would promote voluntary initiation of cleanup activities by people not already required to conduct cleanup under other authorities. EPA continues to hope that ~~that~~ this will be a result of today's rule.

Therefore, EPA has removed this limitation to make it clear that people voluntarily initiating cleanup ~~could~~ can have their properties designated as remediation waste management sites. ~~Such~~ These activities would still ordinarily require a RCRA permit (~~e.g.~~ for example, a RAP) if ~~they~~ owner/operators were to ~~perform treatment, storage or disposal~~ treat, store or dispose of hazardous remediation wastes, so that the proper requirements would be applied, and the public would have the opportunity to participate in the waste management decisions.

Finally, EPA has ~~retained~~ kept in the final rule the part of the proposed definition of media

remediation site that stated that these were not facilities for ~~purposes of~~ implementing facility-wide corrective action. As discussed elsewhere in this preamble, EPA ~~has found~~ believes that ~~the application of~~ applying 3004(u) and (v) and 3008(h) requirements to facilities not already subject to ~~such~~ these requirements is such a disincentive to voluntarily initiated cleanup actions that ~~such~~ people often choose options that do not require permitting, rather than face such a responsibility.

Remediation waste management sites are not subject to facility-wide corrective action

Today's rule, like the proposal, provides that a remediation waste management site is not subject to the requirements in section 3004(u)~~'s requirement~~ for facility-wide corrective action. As discussed fully in the proposal, the Agency believes that it is appropriate to interpret section 3004(u) to exclude facilities engaged solely in ~~the conduct of~~ conducting hazardous waste cleanup, since these are not the types of facilities from which Congress meant to exact a *quid pro quo* for the benefit of obtaining a permit. (61 FR 18792-93).

The large majority of commenters on this issue supported the interpretation, ~~since~~ because it is widely recognized that the facility-wide corrective action requirement often acts as a disincentive to cleanup of wastes subject to Subtitle C. Some commenters, however, expressed concern over the Agency's legal theory supporting the interpretation. This concern appears to stem from the commenters' perception that the Agency is making a purely "semantic" argument -- ~~i.e.~~ that is, that by ~~renaming cleanup-only~~ being re-named ~~remediation-only~~ ~~facilities~~ "media remediation sites," ~~such~~ these sites are no longer the "facilities" to which section 3004(u) applies.

While the Agency understands the commenters' confusion on this point, EPA today is clarifying that it is not the Agency's view that ~~cleanup-only sites~~ remediation-only facilities do not constitute "facilities" for RCRA purposes, but simply that they should not be interpreted to be the

"facilities seeking a permit" to which the requirements of section 3004(u) apply.

The Agency believes it is reasonable to interpret section 3004(u) not to apply to ~~cleanup-only~~ remediation-only facilities, for the reasons set out in the preamble to the proposed rule -- most importantly, that this section is best read as a *quid pro quo* for owning or operating a facility that is or will be engaged in ~~the business of~~ hazardous waste operations outside the context of an environmentally beneficial cleanup activity. Remediation-only facilities, ~~since~~ because they only obtain a permit to engage in remediation, do not fit into that category.

In addition, in light of the disincentive to cleanup created by ~~the application of~~ applying the facility-wide corrective action requirement to ~~cleanup-only~~ remediation-only facilities, to continue to apply the requirement would appear to ~~fly in the face of~~ be contrary to one of Congress' clear goals in enacting section 3004(u) -- to ensure that currently unmanaged remediation wastes that pose a risk to human health and the environment are addressed.

Today's rule differs in one significant respect from the proposal: ~~in that~~ this interpretation is no longer limited to facilities that obtain RAPs, but also applies to remediation-only facilities that obtain ~~obtaining~~ traditional RCRA permits. Thus, any facility that meets the definition of a "remediation waste management site" (promulgated today), regardless of whether its hazardous waste management activities are authorized by a RAP or ~~other~~ traditional RCRA permit, will not be subject to the facility-wide corrective action requirement. The Agency agrees with the one commenter who argued that there was no reason to limit the relief from section 3004(u) to facilities ~~that are~~ addressed under the RAP framework. After all, because the RAP standards are less stringent than existing requirements, States may choose not to adopt them as part of their authorized programs. There is no reason to prevent these States, however, from nonetheless

amending their programs to reflect the § 3004(u) interpretation finalized today. Similarly, if a State ~~that is~~ not authorized for corrective action issues a RCRA permit for remediation-only sites (remediation waste management sites), Federal corrective action requirements ~~would~~ will not attach.

~~This exclusion from the definition of facility is strictly limited to the definition of facility for purposes of corrective action, which is found in part (2) of the definition of facility. Remediation waste management sites are not excluded from part (1) of the definition of facility for other purposes.~~

Although the above discussion stresses the use of RAPs as the vehicle for permitting a remediation waste management site and for applying the benefits of RAPs, the new requirements in § 264.1(j), and the elimination of § 264.101 facility-wide corrective action through the new § 264.101(d) provision for remediation waste management sites are not limited to ~~such~~ sites ~~as that are~~ permitted under RAPs. States wishing to use the traditional RCRA permits process for ~~permitting~~ activities at remediation waste management sites may do so, and the other benefits of remediation waste management sites (§ 264.1(j), and 264.101(d)) continue to apply to remediation waste management sites under permits, as well as under RAPs. The preamble discussion ~~for~~ explaining the need and rationale for these other provisions can be found in the section of the preamble ~~discussion~~ discussing those provisions.

Remediation waste management sites are excluded from only the second part of the definition of facility

This exclusion from the definition of facility is strictly limited to the definition of facility for purposes of corrective action, which is found in part (2) of the definition of facility.

Remediation waste management sites are not excluded from part (1) of the definition of facility for other purposes.

Facility

EPA is revising the definition of facility, (to make conforming changes with the definition of remediation waste management site), as follows:

Facility means ... (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site ~~does not constitute~~ is not a facility ~~for the purposes of~~ that is subject to § 264.101, but is subject to § 264.101 corrective action requirements if the site is located within such a facility.

EPA requested comment on this change to the definition of facility at § 260.10 of the proposal, and did not receive any comments opposing this change, and is therefore finalizing this amendment with only two minor changes.

First, the proposed rule language stated that "notwithstanding (1) and (2)" remediation waste management sites were not subject to the facility-wide corrective action requirement, but on further reflection, it has become clear that the reference to paragraph (1) was an oversight. This is because the proposed definition clearly stated that remediation waste management sites are only not "facilities" "for the purposes of § 264.101." The facility definition in paragraph (1) is not used for those purposes. In addition, because the facility definition in paragraph (1) is used in implementing the rest of the RCRA hazardous waste regulations, which continue to apply to activities at remediation waste management sites, paragraph (1) must remain applicable.

Second, the proposed definitional change did not include the current language ~~which~~ that states "but may be subject to such corrective action requirements if the site is located within such

a facility." EPA has added this clause to make the language consistent with the definition of remediation waste management site, which was included in this language at proposal.

As the Agency stated in the preamble to the proposed rule, this language is meant to provide for the following situation: "In some cases a media remediation site could be part of an operating (or closing) RCRA hazardous waste management facility that is already subject to the § 3004(u) and (v) corrective action requirements; in those cases, identifying an area of the facility as a media remediation site [today's remediation waste management site] would not have any effect on the corrective action requirements for that site or the rest of the facility." (61 FR 18793).

D. ~~Definition of~~ Staging pile – a new kind of unit

The definition of staging pile states that "[s]taging pile means an ~~non-containerized~~ accumulation of solid, non-flowing remediation waste (as defined in 40 CFR 260.10) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director ~~in accordance with~~ according to the requirements of 40 CFR 264.554."

Differences between the definition of staging pile and the existing definition of pile

This definition uses a slight alteration of the definition of "pile," as defined in § 260.10 for waste piles (§ 264.250), which better fits the purposes of today's staging pile rule. The definition of pile differs from the staging pile definition in three ways; the definition of pile:

- is limited to non-containerized waste;
- ~~that it~~ addresses the "accumulation of solid, nonflowing hazardous waste," rather than "solid, nonflowing remediation waste;" and

- allows for "treatment or storage" rather than simply temporary storage.

First, EPA believes it may often be environmentally protective or simply more convenient to move remediation wastes in bags or other containers when placing them into a staging pile. Because bags may reduce blowing of wastes in a pile, or volatilization of hazardous constituents, EPA did not want to eliminate the option of bagging, or other protective activities, of wastes in a staging pile.

Second, because today's rule does not allow~~s neither~~ "as-generated" hazardous waste to be stored or treated in a staging pile~~ nor treatment in a pile~~, the rationale behind ~~this change~~ using the term remediation waste rather than simply hazardous waste should be clear. ~~EPA believes that, like a pile, a staging pile should be defined as non-containerized, thus differentiating it from containerized storage areas such as tanks and drums.~~ EPA also included the "solid, non-flowing" portion of the definition of pile ~~is included~~ to ensure that liquid wastes will not be placed in the staging pile. Liquid wastes are inappropriate for ~~storage~~ storing in staging piles because of the possibility of releases and run-off~~ of liquid wastes~~.

Third, the definition of "piles" allows both storage and treatment. However, as discussed below, staging piles allow only storage.

Differences between the proposed definition of remediation pile and the final definition of staging pile

In the proposed rule, the definition of remediation pile reads that, "[r]emediation [p]ile means a pile ~~that is~~ used only for the temporary treatment or storage of remediation wastes, including hazardous contaminated media (as defined in §269.3), during remedial operations."

This definition was altered for a number of reasons. First, the Agency felt that including the term "pile" in the staging pile definition would only serve to confuse staging piles with waste piles. Furthermore, because staging piles will accept hazardous remediation waste, rather than only hazardous contaminated media for the reasons previously discussed, this portion of the definition also had to be changed. Finally, treatment is not mentioned in today's staging pile definition, because treatment will not be allowed in staging piles. ~~None of the~~ No commenters provided comments directly addressing the definition of remediation pile. For a fuller discussion of staging piles, and the comments EPA received, see the discussion of staging piles in section VII of this preamble.

E. ~~Definition of~~ Miscellaneous unit – an edit to the existing definition

EPA is simply adding the unit "staging pile" to the list of units ~~that are~~ excluded from the definition of miscellaneous unit. The revised definition is as follows:

> Miscellaneous Unit means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, unit eligible for research, development, and demonstration permit under § 270.65, or staging pile.

Miscellaneous units are meant to cover units that do not have regulatory provisions ~~that are~~ specific to that individual type of unit. Because EPA is today adding provisions for staging piles, ~~they~~ staging piles should likewise be excluded from the definition of miscellaneous units.

IV. Information on Remedial Action Plans (RAPs) (§§ 270.2, ~~§~~ 270.68, and ~~§~~ 270.80 -~~§~~ 270.~~96~~ 230)

General Information about RAPs

A. What are EPA's objectives for RAPs?

After considering the public comments on the proposal, the Agency crafted the final RAP regulation with the following six objectives in mind:

One, RAPs should be suited to the specifics of managing remediation waste ~~management~~ in the context of cleanup, both in procedure and in substantive requirements;

Two, RAPs should ensure compliance with the applicable requirements for safe hazardous remediation waste management;

Three, RAPs should provide certainty and protection to the permitted party, as appropriate;

Four, the RAP approval process should provide opportunities for meaningful public involvement;

Five, because RAPs constitute RCRA permits, the RAP approval process must, at the least, follow the statutory minimum requirements for obtaining a permit; and

Six, RAPs, and the RAP approval process should accomplish the previous objectives through ~~promulgation of~~ the most streamlined, reasonable, and understandable regulations possible.

In today's rule, EPA believes that it has reached a reasonable compromise consistent with these objectives. In summary, the RAP requirements promulgated today:

- significantly reduce procedural steps in permitting, while retaining the minimum statutory public participation requirements and certain basic permitting steps or conditions (~~e.g.~~ for example, permit appeal procedures); ~~they replace~~

- replacing the detailed requirements of §§ 270.3 - 270.66 with broader performance standards; ~~they~~
- significantly ~~reduce and focus~~ reducing and focusing information requirements; and
- ~~they remove~~ removing the requirement for facility-wide corrective action.

Given this flexibility, EPA believes that it will be possible for EPA and authorized States to develop RAPs that are much more suited to cleanups than are current RCRA permits ~~are~~ -- that is, a RAP ~~could~~ will generally fit the model of a Superfund Record of Decision or an approval of a cleanup workplan, rather than that of a RCRA Part B permit. EPA believes this flexibility is essential for an effective cleanup program.

At the same time, EPA recognizes that its approach to RAPs in today's rule (and more broadly today's rule as a whole) only partially solves the long-standing problems associated with remediations involving hazardous waste regulated under RCRA Subtitle C. For example, as EPA and others have long emphasized, the statutory public participation requirements (newspaper notices and radio spots) are highly prescriptive without, in fact, ensuring effective public involvement. EPA believes a more flexible approach could better reflect the wide variety of cleanup actions, while still providing ~~an~~ a full opportunity for public involvement. EPA also recognizes that it has made less extensive changes to Subtitle C permitting requirements as they apply to remediation waste than some have recommended. Indeed, EPA believes that, in the long run, further changes are appropriate.

For example, EPA has left the substantive, unit-specific requirements of 40 CFR 264 intact (although ~~it~~ the Agency has added new flexibility for staging piles), even though ~~it~~ EPA recognizes that these requirements do not always make sense in a remedial context. (For

example, secondary containment may not always be needed for tanks within an area of contamination.) EPA took this approach in today's rule because it has not yet aired these issues in detail in previous proposals. EPA is deferring action here, ~~while~~ however, the issues are continuing to be discussed more fully in the context of possible statutory changes to RCRA.

In the meantime, EPA emphasizes that today's rule, in combination with existing rules and policies, provides important flexibility in cleanup scenarios. EPA not only expects that today's rule will provide significant benefits; EPA also intends (and encourages authorized States) to use existing flexibility in EPA land disposal standards for soils, the ~~corrective action management unit~~ CAMU rule (which today's rule is retaining), the Agency's contained-in policy for contaminated media, ~~and~~ the ~~area-of-contamination~~ AOC concept for contaminated sites, and similar tools to expedite effective cleanups. The flexibility provided by today's rule should be understood within this broader context.

B. What is a RAP? (§§ 270.68, 270.2 and 270.80)

§ 270.68

~~In order~~ To make it clear that RAPs are subject to different, more streamlined requirements than other RCRA permits, EPA created a separate Subpart (40 CFR Part 270, Subpart H) for RAPs. The provision in today's rule in § 270.68 simply points readers who may look for RAPs in the existing Subpart F (Special Forms of Permits) to the section for RAPs in the new Subpart H.

The differences between a RAP and a traditional RCRA permit

§§ 270.2 and 270.80(a)

EPA defines a RAP in §§ 270.2 and 270.80(a) as a "special form of RCRA permit that you [~~an~~ a facility owner ~~or~~ /operator] may obtain ~~in lieu~~ instead of a permit issued under sections 270.3 -270.66, to authorize ~~the treatment, storage or disposal~~ you to treat, store, or dispose of hazardous remediation waste (as defined in § 260.10) at a remediation waste management site." Often, remedies selected for cleanup sites involve ~~treatment, storage or re-disposal~~ treating, storing or re-disposing of hazardous remediation waste. RCRA permits are required whenever you treat, store or dispose of hazardous waste (unless a specific permit exemption or exclusion applies). Until now, ~~the treatment, storage or disposal~~ treating, storing or re-disposing of hazardous remediation wastes required the same type of permit as that for as-generated process waste management. Traditional RCRA permits, however, were designed for operating hazardous waste treatment, storage, and disposal facilities managing as-generated process wastes. The permit procedures, requirements, and contents were designed specifically for those situations. Traditional RCRA permits also require facility-wide corrective action under RCRA Sections 3004(u) and (v). Many of these requirements are not well suited to cleanup activities.

Section 270.80(a) also limits RAPs to permit activities done in the area of contamination or areas in close proximity. This is because EPA generally wishes to encourage owners and operators to conduct remediation waste management activities on-site. EPA does allow RAPs for off-site locations for limited circumstance under § 270.230, when managing the remediation waste off-site will be more protective than managing it on-site.

Some advantages of a RAP compared to a traditional RCRA permit

EPA believes that the traditional RCRA permitting requirements are not well suited for cleanup activities for many reasons.

First, flexibility in public participation for RAPs, as opposed to the more specific requirements for traditional RCRA permits, is necessary because cleanup activities vary greatly in volumes of waste to be managed; amount of time allocated for the project; types of activities to take place; and risks posed by the cleanup activities. Also, EPA and State cleanup programs generally involve ongoing dialogue with the surrounding community about choices of remedies and other considerations. Many of these programs have developed creative and successful public participation strategies which may vary slightly from specific procedures that could be set out in a nationally applicable Federal regulation.

Second, the more streamlined and flexible requirements for RAPs are better designed for the cleanup scenario than requirements for traditional RCRA permits in 40 CFR Part 270 because the Part 270 standards are designed specifically to mirror and implement the requirements throughout Subtitle C for as-generated process wastes. As discussed earlier, the Subtitle C requirements are designed for the on-going management of as-generated waste, and are designed to be a "cradle-to-grave" system of regulations that will prevent new releases from the possible mismanagement of hazardous wastes. While this "cradle-to-grave" system has been successful in preventing new releases and in providing incentives to minimize the amount of waste generated, the system is often cumbersome when applied to remediation wastes. Remediation wastes have already escaped into the environment, and often are found in unique volumes, matrices, mixtures, etc. The nationally applicable Subtitle C requirements do not often have the flexibility to respond to unique circumstances encountered at cleanup sites. Therefore, the permitting requirements based on the Subtitle C requirements also do not have the proper flexibility to respond to unique circumstances encountered at cleanup sites.

Third, information requirements for traditional RCRA permits are generally based on those nationally applicable requirements mentioned above, and so are not necessarily appropriate for all cleanup sites.

Fourth and finally, as discussed below, EPA believes that requiring facility-wide corrective action for all new RAPs provides disincentives to cleanups and to remedies that involve excavating and treating or moving wastes. These disincentives are discussed below.

In implementing, overseeing, and observing the hazardous waste cleanup programs under RCRA Corrective Action and State cleanup programs, EPA has concluded that the requirement to obtain a RCRA permit for on-site treatment, storage or disposal of hazardous remediation wastes often acts as a disincentive to cleanup, particularly in the cases where the site is not otherwise subject to RCRA. Cleanups may be desirable at these sites for many reasons (~~e.g.~~ for example, a State or Federal cleanup authority might determine that the site presents a hazard; the facility owner/operator may wish to clean up the property voluntarily; or a potential future facility owner may hope to acquire and reuse the property.) ~~Prior to~~ Before today's rule, if facility owners and operators of these sites chose to treat, store, or dispose of hazardous remediation wastes on-site, they generally would be required to obtain a RCRA permit, along with all the requirements (including facility-wide corrective action) that come with that permit. Obtaining these permits can be very time-consuming and expensive, and facility-wide corrective action provides a strong disincentive to any action that would require a permit. This requirement to obtain a RCRA permit, especially the requirement for facility-wide corrective action, was found

by EPA's Permits Improvements Team (PIT)[8] to be a major disincentive to cleanup. A recent study by the Government Accounting Office (GAO) came to a similar conclusion.[9] ~~In order~~ To avoid having to secure a RCRA permit, many remedial decision-makers often choose options for remediation that avoid application of the permit requirements, such as capping in place, which may not be the best remedial option for the site.

Under the streamlined approach to permitting promulgated today, these sites (which have sometimes been referred to as "remediation-only sites") ~~could~~ can receive a RAP for remediation waste management activities that take place at the site rather than a traditional RCRA permit. EPA has designed the RAPs process to be more streamlined than that for existing permits to reduce disincentives to cleanups. As opposed to traditional RCRA permits, RAP procedures, requirements, and contents are designed specifically for the cleanup scenario.

The differences between the processes for receiving approval of RAPs and ~~that~~ for receiving approval of traditional permits ~~is~~ are described more fully in the sections that follow, as well as in the section entitled "Comparison of RAPs Process to That for Other Permits."

As discussed more fully in the preamble discussion of the definition of remediation waste management site, RAP recipients (other than those who are already subject to the corrective action requirements because of independent RCRA permitting requirements), are also not required to perform facility-wide corrective action. The regulatory language for the exemption

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[8] EPA's ~~The~~ Permits Improvement Team (PIT) ~~of the United States Environmental Protection Agency (EPA)~~ was created in 1994 to identify specific actions that could be taken by EPA to increase the efficiency and effectiveness of environmental permitting programs. The PIT held numerous stakeholder meetings throughout the country and prepared a draft set of recommendations before it finished its work in 1997.

[9] *Hazardous Waste: Remediation Waste Requirements Can Increase the Time and Cost of Cleanups*, U.S. General Accounting Office, GAO/RCED-98-4, October 1997

from the requirements of RCRA §§ 3004(u) and (v) does not actually appear in the RAPs section of the regulatory language. Instead, because the requirements for RCRA §§ 3004(u) and (v) are implemented through the regulatory language at § 264.101, the exemption from these requirements in today's rule is found in Part 264 at §§ 264.1(j) and 264.101(d), as well as in the definition of remediation waste management site and facility in § 260.10, instead of Part 270.

RAPs cannot be used to permit treatment, storage, and disposal of "as-generated" process wastes. RAPs are limited to authorizing the treatment, storage, or disposal of hazardous remediation wastes. As ~~is discussed in~~ this preamble discusses, ~~for~~ the definition of remediation waste~~, hazardous remediation waste~~ is limited to wastes that are managed ~~for the purpose of implementing~~ to implement cleanup~~, and may originate only from within the facility or site boundary, but may include waste that has migrated beyond the facility or site boundary.~~ . This does not include "as-generated" process waste or wastes from any activities that are not specifically implemented for the purposes of cleanup.

Differences between "Remediation Management Plans" in the proposal and "Remedial Action Plans" in the final rule

EPA proposed streamlined permits for remediation-only sites under the name Remediation Management Plans, or RMPs. The RMP concept was proposed at §§ 269.40 through 269.45. As in today's rule, RMPs were proposed as a special form of a permit for hazardous remediation wastes; however, RMPs ~~(or "Remediation Management Plans or RMPs" as they were termed in the proposed rule)~~[10] were also the vehicle by which EPA or a State could exempt low-level

[10] EPA has chosen to use the term RAP in the final rule because it is more commonly understood than RMP.

hazardous contaminated media from Subtitle C management requirements, and could impose any necessary site-specific management requirements on ~~such~~ these wastes. As discussed in section II. E. of this preamble, the Agency is not finalizing the aspects of the proposed rule that exempt hazardous remediation waste from Subtitle C, but is finalizing the streamlined permitting process ~~that would have applied to the treatment, storage or disposal~~ for treating, storing, and disposing of hazardous remediation waste (~~i.e.~~ that is, wastes that would have remained within Subtitle C jurisdiction under the proposal). However, in the final rule, EPA has named these permits Remedial Action Plans or RAPs.

In today's rule, as in the proposal, RAPs streamline the permitting process but, unlike in the proposal, a RAP in today's rule is not used to document and enforce alternative management requirements for remediation wastes that are exempt from Subtitle C. Hazardous remediation wastes remain subject to the applicable requirements of parts 260 - 271. Many of the provisions of the proposed RMPs have been eliminated or revised to accommodate this change.

The specific differences between RMPs, as proposed, and RAPs, as finalized, are discussed under the description of each section of the final regulation. EPA emphasizes that the contained-in principle, which provided a legal rationale for ~~it's~~ the proposed approach exempting low-level contaminated media, remains an existing EPA policy. EPA continues to encourage States to apply this policy, where appropriate, to expedite cleanups.

§ 270.80(b)

In § 270.80(b) EPA states that the requirements of §§ 270.3 - 270.66 do not apply to RAPs unless ~~they~~ those traditional RCRA permit requirements are specifically required under §§ 270.80 - 270.~~97~~ 230, but that the definitions in § 270.2 do apply to RAPs. This is meant simply

to identify those requirements that apply to RAPs and those that do not. Where appropriate, the RAPs requirements in Subpart H include their own provisions ~~in lieu~~ instead of those in §§ 270.3 - 270.66.

§ 270.80(c)

In addition, new § 270.80(c) provides that, notwithstanding any other provision of ~~this~~ [Part 270] or Part 124, any document that meets the requirements of this section constitutes a RCRA permit under RCRA § 3005(c). This is to ensure that, although RAPs may not be expressly referred to in other provisions of Parts 270 and 124, they are indeed RCRA permits. Although today's rule contains additional language to enhance the reader's understanding, these two new provisions are the same as proposed at § 269.40(c). The Agency did not receive any negative comments on this provision, and has therefore finalized the approach as proposed.

§ 270.80(d)

~~In order~~ To facilitate streamlining at cleanup sites, EPA included the provision at § 270.80(d), which states that a RAP may be either: (1) a stand-alone document that ~~only~~ includes only the information and conditions required by this Subpart; or (2) part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this Subpart.

EPA anticipates that RAPs will often be granted at the same time that other decisions, such as remedy selection, are made at a cleanup site. Under the cleanup program, the facility owner/operator or the Director may be preparing other documents, such as remedy decision documents, which may cover much if not all of what a RAP ~~would~~ will cover. EPA has included this provision to make it clear that the facility owner/operator and the Director do not have to

duplicate efforts, and can create one document that serves both purposes. This approach was proposed at § 269.40(e), and again, the Agency did not receive any negative comment on this provision. In this case -- where the issuing authority is an authorized State -- only the portion of the RAP imposed ~~pursuant to~~ under today's rule ~~would~~ will be enforceable as part of the Federal RCRA program.

§ 270.80(e)

Throughout the development of the HWIR-media rule, there has been much confusion about the relationship between RAPs and cleanup requirements. Notwithstanding the confusion, EPA believes this is a very simple relationship. Cleanup programs dictate the goals of cleanup (~~i.e.~~ that is, "how clean is clean" and how to select remedies, investigate sites, and conduct other related activities). Frequently, the remedies selected under these cleanup programs involve ~~the treatment, storage or disposal~~ treating, storing, or disposing of hazardous remediation wastes in a way that would require a RCRA permit.

RAPs are simply the permitting mechanism for authorizing (~~in accordance with~~ according to RCRA requirements) ~~the~~ this treatment, storage or disposal. In section 270.80(e), EPA has clarified that, if you are treating, storing or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your cleanup obligations under those authorities in any way. The RAP does not affect "how clean is clean"(cleanup standards), and does not affect, in any way, existing legal obligations to perform cleanup actions. This was proposed at § 269.1(c), and the Agency did not receive any negative comments on this provision, and so it is being finalized as proposed, except for edits to make it easier to understand.

§ 270.80(f)

New § 270.80(f) provides that interim status facilities that treat, store or dispose of remediation waste under a RAP will not lose their interim status by virtue of receiving an approved RAP, because the RAP applies only to the remediation waste management activities that take place as a result of the cleanup, and not to any obligations under other authorities.

~~However, today's rule is also creating~~ Under today's rule RAPs~~, which~~ can now be used to designate CAMUs, temporary units and staging piles (as well as other non-combustion remediation waste management units and operations). Owners~~/ and~~ operators of interim status facilities who wish to construct CAMUs, temporary units or staging piles may now apply for a RAP as the vehicle for imposing the site-specific requirements, providing a mechanism for enforcing those requirements and providing for public participation. RAPs provide for all three of these functions, and may be a desirable alternative to ~~an~~ a 3008(h) enforcement order.

EPA is concerned that allowing a RAP at an interim status facility may cause confusion about the impact on that facility's interim status, and therefore has included § 270.80(f). Because RAPs are RCRA permits, and because permit issuance at an interim status facility often terminates interim status for that facility, EPA is concerned that some may think that ~~issuance of~~ issuing a RAP at an interim status facility terminates that facility's interim status. Existing § 270.1(c)(4) already provides that, if EPA issues or denies a permit for one or more units at a facility without simultaneously issuing or denying a permit to all units at the facility, this does not affect the interim status for any unit for which a permit has not been issued or denied~~ is not affected~~. Section 270.80(f) in today's rule serves a similar function by providing that RAP issuance does not terminate interim status for the other parts of the facility not covered by the RAP (or for

facility-wide corrective action purposes).

EPA did not specifically propose this provision, but has included it in the final rule to avoid confusion ~~on this issue~~. In the proposed rule (see ~~e.g.~~ for example, 61 FR 18791), EPA stated that these provisions would be implemented under many different programs and agencies. In the proposed rule at 61 FR ~~On page~~ 18814 ~~of the proposal~~, EPA gave examples of CERCLA sites and permitted treatment, storage and disposal facilities (TSDFs), but did not clarify how these requirements would apply at interim status TSDFs. This was an oversight and is corrected by ~~this provision (~~§ 270.80(f)~~)~~ in today's final rule.

C. When do I need a RAP? (§ 270.81 ~~5~~)

§ 270.85(a)

Section 270.81 ~~5~~(a) states that "whenever you treat, store, or dispose of hazardous remediation waste in a manner that requires a RCRA permit under § 270.1, you must either obtain: (1) a RCRA permit ~~pursuant~~ according to §§ 270.3 - 270.66 of ~~this Part~~[Part 270]; or (2) a RAP ~~pursuant~~ according to ~~this Subpart~~[Part 270 Subpart H]."

What activities require RCRA permits?

Section 270.1 describes what activities require RCRA permits. If the facility owner/operator intends to perform activities that require permits, but is managing only hazardous remediation waste and not as-generated process wastes, he ~~or she~~ may take advantage of the streamlined procedures for RAPs, or may obtain a traditional RCRA permit. There are also instances where ~~treatment, storage or disposal~~ treating, storing or disposing of remediation wastes do~~es~~ not require a RCRA permit. Today's rule, ~~same as in~~ like the proposal, will not change, in

any way, when a RCRA permit is required. Thus, no RAP is needed where a permit would not otherwise be required.

One example of when neither RAPs nor traditional RCRA permits would be required is CERCLA removal and remedial actions. CERCLA §121(e) grants a RCRA permit waiver for on-site response actions selected under CERCLA §121. Generally, however, a Record of Decision (ROD) or other CERCLA decision document would specify the requirements for ~~compliance~~ complying with the substantive RCRA Subtitle C requirements for ~~the treatment, storage or disposal~~ treating, storing, or disposing of remediation waste ~~occurring~~ on-site. Another example would be ~~in the case where a~~ when State that is authorized to implement the RCRA program has a permit waiver authority that is ~~comparable~~ analogous to EPA's authority under CERCLA §121(e) or RCRA §7003. This permit waiver policy is described in a memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA to Regional Administrators, Regions I - X, EPA, (November 16, 1987) available in the docket to today's rule. Today's rule does not change or affect this policy in any way.

In addition, facility owner/operators may manage hazardous remediation wastes in a way that does not require a RCRA permit. For example, contaminated remediation wastes can be capped in place, or excavated and transported off-site to a designated, permitted facility for treatment or disposal. Another example is that wastes can be treated or stored on-site in units that are exempt from permitting requirements, such as wastewater treatment units. (See 40 CFR §§ 264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v)). Still another example is that remediation wastes can be treated or stored on-site for less than 90 days in tanks, ~~or~~ containers, or containment buildings (see 40 CFR § 262.34), which also does not require a permit.

§ 270.85(b)

In the proposed rule at § 269.43(f), EPA proposed that RMPs involving on-site combustion of hazardous remediation wastes would have to follow the requirements for issuance of RCRA permits in 40 CFR Parts 270 and 124, and would not be eligible to obtain RMPs. EPA has finalized that requirement at new § 270.8~~1~~5(b).

EPA received one negative comment on that provision~~. This commenter~~, which stated that the Agency had not demonstrated how combustion of hazardous remediation waste is different from other management techniques. However, the Agency continues to believe, as stated in the preamble to the proposed rule (61 FR 18818), that it is necessary to include this provision because §§ 270.16 and 270.62 include requirements for trial burns and other important procedures for incinerators that EPA continues to believe are necessary, even for combustion units handling hazardous remediation waste. Also there is a high level of public interest in hazardous waste combustion, which EPA believes merits the extra public participation steps of the traditional RCRA permitting process.

Another commenter asked that EPA clarify the procedures required for permitting of combustion units under RAPs. The proposed rule stated that "for remedial actions involving on-site combustion of hazardous remediation wastes, the procedural requirements for issuance of RCRA permits ... shall at a minimum be followed for review and approval of RMPs [which are RAPs in today's final rule]." This language led to confusion over what requirements are considered "procedural." Today's final rule states that "[t]reatment units that utilize combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this Subpart."

EPA believes that this revised regulatory language makes it clear that permitting for combustion units does not follow any of the RAP requirements, but instead the traditional RCRA permitting requirements. (However, 40 CFR § 264.101(d) of today's rule would exempt a facility receiving a permit for a combustion unit from facility-wide corrective action, if that facility were a remediation-only site (remediation waste management site).)

§ 270.85(c)

The proposed rule provided for the situation where a facility owner/operator permitted for on-going hazardous waste operations sought a RAP for cleanup activities at the facility. Under the proposed rule, ~~an~~ a facility owner/operator might desire a RAP for two reasons -- the RAP was the vehicle by which remediation wastes could become exempt from Subtitle C, and, for wastes that remained in Subtitle C, the application and procedural requirements for RAPs were more streamlined and better tailored to the remediation scenario.

To accommodate these situations, the proposed rule would have allowed traditional RCRA permits to serve as RAPs (section 269.40(e)(2)), and also would have allowed the permitted facility to obtain a RAP, which would only cover the remedial operations at a site, in addition to its RCRA permit, (see 61 FR 18814). Because under the final rule, RAPs are not a vehicle for obtaining an exemption from Subtitle C, there is no need to finalize the proposed rule provision allowing traditional RCRA permits to serve as RAPs. On the other hand, the Agency continues to believe it is appropriate to allow permitted facilities to obtain the benefits provided by the RAP format and has crafted today's rule accordingly.

Specifically, today's rule (§ 270.8~~1~~ 5(c)) states:

"You may obtain a RAP for ~~management of~~ managing hazardous remediation waste at an

already permitted RCRA facility. You must have these RAPs ~~Such RAPs must be~~ approved as a modification to your existing permit ~~pursuant~~ according to the requirements of §§ 270.41 or 270.42 ~~in lieu~~ instead of the requirements of this Subpart. When you submit an application for such a modification, however, the information requirements in § 270.42(a)(i), (b)(iv), and (c)(iv) do not apply; instead, you must submit the information required under § ~~270.82(a) and (b)~~ 270.110. When your permit is modified, the RAP becomes ~~Upon modification of the permit, the RAP is incorporated as~~ part of the RCRA permit. ~~, and~~ Therefore when your permit (including the RAP portion) is modified, revoked and reissued, terminated, or when it expires, it will be modified according to the applicable requirements of §§ 270.40 through 270.42, revoked ~~or~~ and reissued according to the applicable requirements of §§ 270.41 and 43, terminated according to the applicable requirements of § 270.43, and ~~or will~~ expire ~~in accordance with~~ according to the applicable ~~permit~~ requirements of ~~Part 124 and sections 270.1 - 270.66, and the permit.~~ §§ 270.50 and 270.51."

This approach differs from the proposal in that a facility with a permit covering ongoing hazardous waste operations would not obtain a RAP as a separate authorizing document for the hazardous waste management activities conducted during the course of cleanup. The Agency made this change ~~in order~~ to avoid potential overlaps, gaps or confusion in having two authorizing documents at one facility. Instead, the rule provides that a RAP at a permitted facility be integrated into the permit as a permit modification. Thus, the more streamlined RAP application content requirements in § ~~270.82(a) and (b)~~ 270.110 apply, but the procedures for RAP approval in these cases are the permit modification procedures §§ 270.41 or 270.42.

The Agency chose the permit modification procedures over the RAP procedures because it believes that establishing two different procedures for permit modifications -- depending on whether you were modifying permits to include a RAP, or doing any other form of permit modification under §§ 270.41 and 270.42 -- would be unnecessarily confusing.

Comments were mixed. Two commenters stated that the proposed rule was unclear as to how RAPs would apply at facilities that already had a RCRA permit. One commenter said that EPA should not require both a RAP and a permit for the same activity. Another commenter suggested ~~that~~ amending permits ~~be amended~~ to require compliance with RAPs. Two other commenters ~~on this issue~~ disagreed with each other. One stated that RAPs would be beneficial because they would avoid the cumbersome and costly permit modification process. The other stated that it was unnecessary and inappropriate to allow separate and less rigorous procedures at facilities already subject to permitting. EPA ~~dis~~agrees with this commenter to the extent that today's rule requires issuance, modification, revocation and reissuance, and termination of RAPs through standard permit procedures at permitted facilities. But, EPA also believes that the relief provided by the content requirements for RAPs at § 270.100 should be available at permitted facilities. EPA developed the ~~procedures and~~ standards of today's rule with cleanups specifically in mind. ~~It~~ The Agency believes that they are ~~equally~~ generally appropriate for ~~applicable to~~ cleanups taking place at TSDs, ~~and~~ as well as to cleanups taking place under RAPs elsewhere.

There are three classes of modifications for traditional permits, Classes 1, 2, and 3. When modifying a permit to incorporate a RAP, the Director and the facility owner/operator ~~should~~ must follow the Class modification procedure that is appropriate for the activities being permitted under the RAP. The last sentence of new § 270.8~~1~~5(c) provides that once the RAP is part of the

permit, the applicable permit procedures must be followed for modification, revocation and reissuance, termination and expiration. However, the content requirements for RAPs will always remain those in § ~~270.82(a) and (b)~~ 270.110. EPA included this provision to avoid confusion about which requirements apply when making changes to RAPs that are part of RCRA permits.

This does not mean that RAPs at permitted facilities must follow two procedures, one for approval of the RAP and one for permit modification. On the contrary, RAPs at permitted facilities need only follow one process, the permit modification procedure, ~~in order~~ to receive approval.

D. Does my RAP grant me any rights or relieve me of any ~~rights or~~ obligations? (§ 270.90)

Today's rule at new § 270.90 applies the § 270.4 provisions to RAPs. Section 270.4(a) is known as "permit as a shield," and ~~provides protection to~~ protects the facility owner/operator in that as long as they ~~are in compliance~~ comply with the terms of their RAP, they will be considered in compliance with RCRA Subtitle C for enforcement purposes, except for the four exceptions noted below. This means that EPA will not take enforcement actions against facility owner/operators for activities that are in compliance with their RAP, unless one of the four exceptions in § 270.4(a) applies. Although the proposed rule did not contain this provision, EPA requested comment on applying it at 61 FR 18815 of the proposal.

One commenter expressed concern about EPA granting "permit as a shield" to RAPs, arguing that the shield concept presumes that all RAPs will be properly drafted, and that this presumption is inappropriate, given the Agency's own acknowledgment, embodied in the proposed rule's requirements for State HWIR-media program withdrawal, that improper drafting may occur. Several other commenters, however, stated that it is appropriate to specify that

compliance with a RAP constitutes compliance with RCRA.

The Agency agrees with these latter commenters. The Agency believes that including this provision is necessary to provide facility owners and operators with a measure of assurance that activities ~~taken~~ performed ~~pursuant to~~ under an approved RAP will be recognized by the Agency as satisfying Subtitle C requirements for those activities expressly addressed and permitted by the RAP. EPA articulated the rationale for ~~such~~ a "shield" provision in the May, 19 1980 final rule, which established this provision for permits (see 45 FR 33311). Specifically, EPA stated:

> "EPA believes that this "shield" provision is one of the central features of EPA's attempt to provide permittees with maximum certainty during the fixed terms of permits. ... This new provision gives a permittee the security of knowing that, if it complies with its permit, it will not be enforced against for violating some requirement of the appropriate Act [e.g. , RCRA] which was not a requirements of the permit.... EPA agrees that one of the most useful purposes of issuing a permit is to prescribe with specificity the requirements that a facility will have to meet, both so that the facility can plan and operate with knowledge of what rules apply, and so the permitting authority can redirect its standard-setting efforts elsewhere. If all the 3004 standards were fully enforceable against a permitted RCRA facility even though they were not reflected in the permit (or, perhaps, not consistent with it), facilities would be exposed to unavoidable uncertainty as to the standing of their operations under the law. In addition, such a provision would increase pressure on EPA and States to keep permit conditions applicable to a given facility in a perpetual state of re-examination. EPA's resources will at most be barely sufficient to issue and renew RCRA permits, and review State permits, at the time of their initial

issuance and periodic renewal. EPA and States are likely to make much better use of their resources if they restrict examination of permits between issuance and renewal to monitoring compliance and taking enforcement action where necessary.... [The shield] now places the burden on permit writers rather than permittees to search through the applicable regulations and correctly apply them to the permittee through its permit. This means that a permittee may rely on its ... permit document to know the extent of its enforceable duties."

With regards to the commenter who was concerned about granting "permit as a shield" to RAPs, EPA believes that the commenters concerns are alleviated by the differences between the proposed and the final rule. ~~Also,~~ RAPs under the proposed rule performed a different function from RAPs under the final rule. In the proposed rule, RAPs were the vehicle for excluding remediation wastes from Subtitle C requirements and instead imposed site-specific requirements on these wastes. The commenter who was concerned about the permit as a shield provision may have been concerned that a poorly written RAP might include site-specific requirements for wastes excluded from Subtitle C that were not protective of human health and the environment. Because today's final rule does not exclude any wastes from Subtitle C requirements, that is no longer a concern.

As mentioned above, § 270.4(a) includes four exceptions to the "shield" provision. Specifically, the permit does not shield the facility owner/operator from enforcement for requirements not included in the permit which:

(1) become effective by statute;

(2) are promulgated under Part 268 of this chapter restricting the placement of hazardous wastes

in or on the land;

(3) are promulgated under Part 264 of this chapter regarding leak detection systems; or

(4) are promulgated under Subparts AA, BB or CC of Part 265 of this chapter limiting air emissions.

~~It should be noted,~~ With respect to the fourth exception, ~~that~~ under § 264.1080(b)(5) the requirements of Part 264 Subpart CC do not apply to "a waste management unit that is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v) or 3008(h), CERCLA authorities, or similar Federal or State authorities." Therefore, remediation waste management units permitted by RAPs will not be subject to Subpart CC requirements. EPA expects that any of these four exceptions to the shield, especially numbers (3) and (4), will often not be relevant to activities taking place under RAPs.

~~It is also important to note that~~ Also, in the same way as for traditional RCRA permits, the shield provisions ~~only~~ cover only activities that are authorized by the RAP, not any other hazardous waste management activities the facility owner/operator may perform at the site. For example, if the RAP covers a treatment unit, then activities performed in compliance with the RAP requirements for that treatment unit are covered by the "shield."

However, if the operator decides to build and use a disposal unit on-site that is not addressed in the RAP, the operator must either obtain a modification to the RAP, or a traditional RCRA permit for that new activity, or they will not be shielded from an enforcement action under RCRA for ~~the operation of~~ operating that unit without a permit. In no way ~~should~~ does this provision be ~~construed as~~ shield~~ing~~ ~~an~~ a facility owner or operator from an enforcement action for

a RCRA violation for any as-generated waste management requirements (as those activities are excluded from coverage under RAPs). Finally, because a RAP is simply a permitting mechanism for managing remediation waste, but does not address cleanup obligations, 270.4(a) does not shield ~~an~~ a facility owner/operator from cleanup obligations ~~applicable~~ that apply to facilities subject to Federal or State remedial authorities.

Section 270.4(b) and (c) address property rights, privileges, and authorization of injury, invasion of rights, or infringement of State or local law or regulations. Because the Agency received no adverse comments on these provisions proposed at § 269.40(f) and (g), and because they were the same as § 270.4(b) and (c) for traditional RCRA permits, EPA is not creating new provisions specific to RAPs, but is applying the identical § 270.4(b) and (c) provisions to RAPs as proposed.

Applying for a RAP

E. How do I apply for a RAP? (§ 270.~~82~~ 95)

The first step towards obtaining RAP approval is to apply for a RAP. This section simply states that to apply for a RAP the owner/operator must complete and application, sign it, and submit it to the Director according to the requirements of part 270 Subpart H. ~~There are five issues covered in § 270.82:~~

~~(a) Who applies?,~~

~~(b) What must I include in my application for a RAP?,~~

~~(c) What if I want to keep such information confidential?,~~

~~(d) Whom do I submit my application to?, and~~

~~(e) What must I do if I submit my application as part of another document?~~

F. Who must obtain a RAP? (§ 270.100) ~~Who applies? (§ 270.82(a))~~

This requirement explains that if the site is owned by one person, but the activities are operated by another person, then it is the operator's duty to obtain a RAP, except that the facility owner must also sign the RAP application. It mirrors the requirement for other permits in § 270.10(b). The operator is the person responsible for the activity being permitted by the RAP, is the most familiar with the proposed activity, and is therefore, the most reasonable choice for who should be responsible for obtaining the RAP. The proposed rule stated that "the owner/operator must receive approval by the Director of a Remediation Management Plan (RMP)." The proposal did not distinguish between the facility owner and operator, but the Agency believes that this provision of today's rule will provide additional clarity about who is responsible for obtaining a RAP.

G. Who must sign an application for a RAP? (§ 270.105)

The proposed rule (at § 269.43(b)) (like the final rule today) required both the facility owner and operator to sign the application for a RAP ~~in accordance with~~ according to § 270.11. Their signatures are meant to certify that the information contained in the RAP application, to the best of the signatory's knowledge and belief, is true, ~~and~~ accurate, and complete (see § 270.11 (d)).

In response to the Agency's request for comment on whether signatures of both the facility owner and operator should be required (61 FR 18817), several commenters objected to the proposed requirement, pointing out that in many instances one party may take a completely passive role in the cleanup process. One commenter pointed out that the current owner of a site

may not have technical involvement in the cleanup or may be unwilling to commit resources to the cleanup.

These commenters felt that it could obstruct or delay cleanup efforts if both parties are required to sign the RAP application, especially if the passive party ~~were~~ was fearful of incurring liability by signing. Other commenters felt that both parties should be required to sign the RAP application (as is ~~currently~~ required for traditional RCRA permits) as an indication that they both agree with the provisions ~~therein~~ in it. One of these latter commenters pointed out that States still hold the facility owner responsible for activities on his property regardless of whether another party operates the site. This commenter felt that requiring the facility owner to sign as well as the operator would signify that the property owner is aware of the activities occurring on his property.

EPA has sympathy with commenters on this issue who argue that in some cases owners may take a passive role, especially with respect to how the remediation waste is managed. At the same time, EPA notes that, under the statute, RCRA permits must be issued to both the owner and the operator. EPA also believes that owners, as well as operators, should ordinarily be responsible for the conduct of cleanup activities. Finally, owners may know about activities on the property that the operator is not involved in or aware of, and can provide valuable information for the permit. ~~Based on the comments received, the Agency does not at this point believe that there is sufficient reason to treat this issue differently in RAPs and than in traditional RCRA permits.~~ To be sure, one of the prime justifications for requiring the facility owner's signature on the permit -- that the facility owner is liable for facility-wide corrective action -- does not apply in this case. Nevertheless, ~~EPA has concluded that~~ the facility owner's signature is generally

important to confirm that the cleanup is proceeding with his knowledge and approval, and to put the facility owner on notice of potential liabilities. Where it is difficult to get ~~an~~ a facility owner to agree to a RAP, EPA may find that an enforcement action is more appropriate than a permit.

As proposed (§ 269.43(b)), ~~the last sentence of § 270.82(a)~~ § 270.105 in today's rule requires the RAP application to be signed ~~in accordance with~~ according to § 270.11. The requirements of § 270.11(a) specify the appropriate person to sign the RAP application in the case of a corporation, partnership, sole proprietorship, municipality, State, Federal, or other public agency. Section 270.11(b) requires that any reports required by the RAP be signed by the person specified in § 270.11(a) or a duly authorized representative. Section 270.11(c) describes what to do if authorization under § 270.11(b) changes. Section 270.11(d) requires a person signing a document under § 270.11(a) or (b) to certify that the documents were prepared under their direction, that the information is accurate and complete, and that they understand the penalties of submitting false information. EPA has provided that the facility owner may choose an ~~alternate~~ alternative certification under § 270.11(d)(ii) if the operator certifies under § 270.11(d)(i).

After reviewing comments on the respective role of the operator and the land owner, EPA concluded that a less rigorous certification may be appropriate for the land owner, if the operator is more familiar with the cleanup activities than the facility owner. As explained earlier, EPA expects that the operator will be preparing the RAP application and will be familiar with its details. He will also be responsible for carrying out the cleanup. Therefore, it makes sense to have ~~him~~ the operator provide the certification. At the same time, as a signatory to the permit, the landowner remains jointly and severally liable with the operator, and EPA retains the ability to enforce the terms of the RAP against the landowner where this enforcement is appropriate in

EPA's discretion. ~~take enforcement action against him, where appropriate.~~

EPA believes that the less rigorous certification in § 270.11(d)(ii) is appropriate because it continues to require the facility owner to make appropriate inquiries and provide ~~disclose~~ any information he has about the property that will be the subject of the RAP. ~~personal knowledge of, but does not require him to be personally knowledgeable about all the activities being done by the operator.~~ Other than general comments on who should submit the permit application, EPA did not receive comment on these requirements. Therefore, with this one exception, EPA has finalized the requirements as proposed.

H. What must I include in my application for a RAP? (§ 270.110) ~~(§270.82(b))~~

Description of the specific content requirements

This subsection lists ~~eight~~ the specific pieces of information that the owner/operator must ~~be included~~ include in a RAP application, and also requires the facility owner ~~or~~ /operator to submit any other information the Director considers necessary. The information required under § ~~270.82(b)(1) - (5)~~ 270.110(a) - (e) includes names and addresses, latitude and longitude of the site, a map showing site location, and scaled drawings of the remediation waste management site features and boundaries.

The proposal did not explicitly list in the "Content of RMPs" section the information required in the final rule under § ~~270.82(b)(1) - (5)~~ 270.110(a) - (e). However, these details were suggested by a commenter on the proposal. EPA expected that this information would generally have been required under the proposed rule. Because the information would be important in identifying the activities to be authorized by a RAP, the information generally would either have been included in the RAP application, or if not, would have been required by the Director under

the proposed § 269.41(c)(10)("other information determined by the Director to be necessary").

The Agency, however, agrees with the commenter that it should be added as an express requirement, to avoid any unnecessary delay caused by an applicant's failure to submit it in the first instance. In addition, these information requirements are similar to the types of information required under a Part A application in § 270.13, although better tailored to the remediation scenario.

New section ~~270.82(b)(6)~~ 270.110(f) requires the application to specify the hazardous remediation waste to be treated, stored, or disposed of, to estimate ~~of~~ the quantity of waste to be managed, and to describe the processes to be used for ~~treatment, storage or disposal~~ treating, storing, and disposing of ~~such~~ the waste. This provision finalizes appropriate aspects of what was required under proposed §§ 269.41 (c)(1) - (6).

Specifically, the proposed rule ~~differed~~ differs from the rule promulgated today in that it required information regarding not only what under today's rule constitutes "hazardous remediation waste," but also what constitutes "non-hazardous contaminated media." The Agency has eliminated references to "non-hazardous contaminated media" because, as discussed more fully in preamble section II. E., EPA has decided not to finalize any of the approaches from the proposal that would have excluded remediation waste from Subtitle C, and had the RAP address non-hazardous media. The Agency has therefore eliminated requirements that were proposed to implement that portion of the proposed rule (proposed § 269.41(c)(1) and (3)).

Section ~~270.82(b)(7)~~ § 270.110(g) requires the facility owner/operator to submit information to demonstrate that the remediation wastes will be managed ~~in accordance with~~ according to the applicable hazardous waste management requirements found in Parts 264, 266

and 268. This provision finalizes the proposed provision of § 269.43(c)(2). Although many commenters would have preferred all remediation wastes to be exempt from the Subtitle C requirements, including Parts 264, 266 and 268, for the reasons discussed earlier in this preamble, the Agency has decided not to finalize either the Bright Line or Unitary approaches which would have exempted remediation wastes from Subtitle C ~~that option~~, and therefore, all hazardous remediation wastes remain subject to these requirements.

This flexible requirement replaces the detailed, unit-specific requirements ~~of~~ in 40 CFR §§ 270.14 - 270.27 that apply to traditional RCRA permits, and which lay out the information required in a Part B permit application. EPA has taken this more flexible approach, both because of the wide variation in cleanup activities, and ~~its~~ because of the Agency's interest in streamlining the permit process for remediation activities. ~~EPA has concluded that~~ In implementing current remedial programs, including CERCLA and EPA's RCRA enforcement programs, ~~provide ample precedent of~~ the regulated community, the regulators, and interested members of the public ~~working~~ successfully work together to develop enforceable remediation plans, and EPA believes there is no need for the Agency at this point to mandate detailed "information" requirements for RAPs based on part B requirements. Thus today's rule simply requires the RAP applicant to provide enough information to demonstrate compliance.

Section ~~270.82(b)(8)~~ 270.110(h) requires the RAP applicant to submit ~~sufficient~~ enough information for the Director to comply with other Acts, as required for traditional RCRA permits under § 270.14(b)(20). In approving any form of permit, the Director ~~is required to~~ must comply with the requirements of other applicable laws, and therefore, may need information from the RAP applicant to determine the applicability of these other Acts. This was not specifically

discussed in the proposal, but where applicable, could have been required under proposed § 269.41(c)(10). The Agency believes that making this requirement explicit will eliminate delays that might result from any potential confusion on this point.

~~Because~~ The wide variation in possible hazardous remediation waste management that may take place under RAPs makes it difficult to anticipate all of the Director's information needs. Therefore, section ~~270.82(b)(9)~~ 270.110(i) requires the RAP applicant to submit any other information the Director determines to be necessary for demonstrating compliance with the provisions of ~~this Subpart~~ Subpart H of part 270 or for determining additional conditions ~~as~~ necessary to protect human health and the environment.

The first part of ~~this provision~~ § 270.110(i) was proposed at § 260.41(c)(10); because EPA received no comment ~~was received~~ on this provision, it is finalized as proposed. The second part § ~~270.82(b)(9)~~270.110(i) ~~regarding~~ about information for determining additional conditions ~~as~~ necessary to protect human health and the environment simply makes express the Director's authority to request information necessary to enable him to fulfill his duty under the "omnibus" authority of RCRA § 3005(c)~~'s "omnibus" authority~~ to include conditions in permits necessary to protect human health and the environment. This statutory provision is codified in today's rule at § ~~270.85(d)~~ 270.135(b)(4).

All of the information required under § ~~270.82(b)~~ 270.110 forms the basis for the Director's determination of whether or not to approve the RAP application. The Agency expects RAPs to be more streamlined than traditional permits and therefore expects that, as a general matter, the information the facility owner/operator ~~would~~ will need to submit for a RAP application ~~would~~ will be significantly less than is traditionally required ~~traditionally~~ for a RCRA

Part B permit application under §§ 270.14 - 270.27. This is because the specific Part B requirements for units, which are much more extensive that what is required by today's rule, were designed with long-term operation of a TSDF in mind. ~~Such~~ This operation is generally very different from the activities that take place as part of a one-time remediation waste management activity.[11]

Also, the Agency believes that, due to the wide range of activities that might take place under a RAP, it is more appropriate to provide flexibility so that the appropriate amount of information can be determined by the site-specific action. RAPs may permit many different types of activities, ~~may be permitted under RAPs~~ from on-site storage of investigation-derived waste to treatment and permanent disposal ~~pursuant to~~ under RCRA requirements. EPA has allowed considerable flexibility in what information is required to be submitted, to allow for the variation in the types of activities being performed under a RAP, and the anticipated generally shorter time-frames for remediation waste management activities.

Comments on the contents of RAPs

Several commenters agreed with EPA's basic framework for the contents of RAP applications. Commenters suggested additional information that should be included in a RAP application if it were the vehicle for determining when hazardous contaminated media could be exempt from Subtitle C, but because the RAP is not serving that function, those comments ~~are~~ no longer ~~applicable~~ apply. One commenter was concerned that EPA would require information on management of wastes off-site, but ~~such~~ that information is not required in today's rule.

[11] It should be noted that EPA is also developing a proposal to streamline (and in most cases eliminate) information requirements for RCRA permits covering on-site storage or treatment of hazardous waste in tanks or containers.

One commenter was concerned that the requirements to include volumes of the waste being managed would require excessive site characterization. However, the regulatory language in § ~~270.82(b)(6)~~ 270.110(f) reads, "an estimate of the quantity of ~~such~~ these wastes," which is the same language used for Part A permit applications in § 270.13(j). The purpose of this information is simply to provide an idea of the scope of the operation, not to require an exhaustive site characterization effort. EPA understands that the estimated volume of waste to be managed may change significantly in the course of the cleanup.

Another commenter noted that the different types of wastes regulated under the proposed "Bright Line" approach made the contents of RAPs overly complicated, but EPA is not finalizing that option in today's rule, and so has eliminated that complication.

Several commenters asked that EPA allow the RAP to be coordinated with other submittals of the same information, so that efforts need not be duplicated to prepare numerous submittals. It is for precisely that reason that EPA has allowed other documents (or parts of other documents) to serve as parts or all of the RAP if they contain the information and conditions necessary for RAPs, so that the facility owner/operator does not have to duplicate efforts. This can be found at new § ~~270.82(e)~~ 270.125.

Finally one commenter suggested that EPA make it possible for ~~an~~ a facility owner/operator to incorporate "presumptive remedies" into RAPs similar to the approach EPA developed in the CERCLA program. While EPA is not addressing issues such as proper cleanup levels or remedies under tody's rule, ~~Under such an this approach,~~ EPA could develop a set of "standard" RAP provisions to cover commonly encountered situations at sites managing hazardous remediation wastes. These generic provisions could be customized, as necessary, to

address appropriate site-specific considerations.

EPA believes ~~the "presumptive remedy"~~ that a "generic RAP provisions" approach can be appropriate at RCRA ~~as well as at CERCLA~~ sites, and it agrees ~~such an~~ this approach can significantly streamline the development of new documents. EPA will consider creating such a model as guidance for the HWIR-media rule.

However, in the meantime, EPA encourages States, or even large companies with multiple sites, to develop model RAPs. For example, commenters have told EPA that there are multiple, similarly contaminated areas in Alaska involving petroleum product spills. ~~BP - Alaska wrote to EPA recently asking a similar question.~~ EPA believes that this may be an appropriate situation for ~~BP- Alaska~~ regulated industries, the State of Alaska, and EPA to work together to develop a model RAP that would cover the situations frequently encountered in Alaska with petroleum and other contaminants. Such a model RAP could be used, with minor modifications to consider any unique, site-specific circumstances, and would be faster to develop and approve if EPA, the State, and the facility owner/operator had already agreed on the basic principles in the model.

Contents of RAPs in the proposal that are not required in the final rule

~~There are~~ Several parts of the proposed "RAPs contents" requirements ~~that~~ are not included in the final rule. First, proposed section 269.41(c)(8) required facility owners and operators to submit information ~~which~~ that describes planned sampling and analysis procedures. This requirement is not necessary because waste analysis is required under today's rule at § 264.1(j)(2).

Proposed sections 269.41(c)(9) and 269.42(b) required facility owners and operators to submit data from treatability studies and full scale implementation of treatment systems to EPA.

The Agency has not included that requirement in the final rule. EPA proposed to require the collection of treatability data so that it could set treatment standards with reasonable confidence that those standards could be met with available technologies, and to provide information on the effectiveness of available technologies in treating different kinds of contaminated media.

One of the proposed rule's goals was to provide data to ensure appropriate future treatment requirements. ~~In order~~ To collect this data, the proposed rule would have required owners and operators to submit ~~the submission of~~ data to EPA upon ~~conclusion of the implementation of~~ completing remedial ~~technologies~~ treatment (both full-scale as well as treatability studies). EPA has decided not to mandate the collection of treatability data for contaminated media as originally proposed. ~~In the proposal, it was felt that the submittal of treatability data was a small price to pay in exchange for the relief from Subtitle C that the proposal would have granted. Because the Agency is not now finalizing a comprehensive HWIR-media rule that would provide an exemption from Subtitle C management, the Agency believes that it is no longer reasonable to require the submittal of such treatability data as a quid pro quo. Furthermore, since today's rule does not address the waste treatment issues addressed in the proposal (new land disposal restrictions treatment standards for soils), this requirement would be out of place.~~ Since the proposal, EPA has finalized new LDR treatment standards for contaminated soils. EPA believes that those new standards are supported by the available data and does not feel it is necessary to burden the regulated community with the requirement to submit treatability data. Treatability data is discussed more fully in the preamble to the LDR Phase IV rule (63 FR 28556 (May 26, 1998)) ~~where~~, in which EPA finalized the soil treatment standards proposed in the HWIR-media proposal.

Also, in the proposed rule at § 269.42(a), EPA proposed that treatability studies that would require a RCRA permit could be conducted under a RMP instead. The significant benefit of this requirement ~~in the proposal~~ was that those wastes in the treatability study could be excluded from Subtitle C requirements under the RMP. Because RMPs no longer serve that function, the remaining benefit would be the more streamlined process for receiving RAP approval under the final rule instead of a traditional permit.

As discussed throughout the RAPs section of today's rule, any on-site treatment, storage or disposal of hazardous remediation waste that would have otherwise required a RCRA permit may be authorized under a RAP, which would include any treatability studies. Therefore, a separate provision allowing treatability studies under a RAP is not necessary.

EPA recognizes that treatability studies conducted off-site may still confront the problem of needing a traditional RCRA permit, and EPA will ~~look into~~ evaluate this and any remaining issues with regard to treatability studies in the future.

In the preamble to the proposed rule at 61 FR 18817, EPA requested comment on the limits on the existing Treatability Sample Exclusion Rule (§ 261.4(e) and (f)), which exempts the generator of wastes for treatability studies from 40 CFR Parts 261 through 263, and from notification under RCRA § 3010. The rule also exempts the facility conducting the study from 40 CFR Parts 124, 261-266, 268 and 270 and from notification under RCRA § 3010. This exemption is currently limited to volumes of no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream.

This exemption remains in effect for no more than 90 days after the study is completed or one year (two years for bioremediation) after the shipment of the same sample, whichever comes first. The Regional Administrator may grant requests ~~on a~~ case by case ~~basis~~ for up to an additional two years for treatability studies involving bioremediation. The Regional Administrator may grant requests ~~on a~~ case by case ~~basis~~ for extensions of the quantity limits for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, and 1 kg of acute hazardous waste.

When EPA requested comment on whether it should amend the rule to allow EPA to expand those limits on a site-specific basis; the Agency ~~EPA~~ received several comments ~~comments on this issue~~. All comments ~~were in~~ favored ~~of~~ giving site-specific discretion to the Director to determine appropriate volumes of wastes to be included in the treatability study, and to determine appropriate timeframes. Despite the favorable comment, EPA is not including this provision in the final rule. ~~It~~ The Agency is reviewing more broadly the issue of treatability studies and may consider more extensive relief at a future date.

I. What if I want to keep ~~such~~ this information confidential? (§ 270.115) ~~(§ 270.82(c))~~

Some information required under § ~~270.82(b)~~ 270.110 may be confidential business information, such as the design of treatment units. This provision simply requires the facility owner ~~or~~ /operator to assert a claim of confidentiality at the time the information is submitted, and EPA will treat the information ~~in accordance with~~ according to 40 CFR Part 2 (Public Information).

EPA has included this provision in the final rule, which is substantially the same as §

270.12 (with only minor changes meant to make the regulation more readable), to allow the facility owner ~~or~~ /operator to protect ~~such~~ this information. This provision was not discussed in the proposal, but EPA has added it to allow for confidentiality in the same way as with other permitting requirements, and to protect legitimate confidential business information of RAP applicants.

J. To whom ~~do~~ must I submit my RAP application ~~to~~? (§ 270.120) ~~(§ 270.82(d))~~

This provision simply requires that the facility owner/operator submit the RAP application to the Director. This was proposed at § 269.41(a). The "Director" is the EPA or State official responsible for the RCRA hazardous waste management program in the relevant State or Tribal lands, and is defined in § 270.2.

K. If I submit my RAP application as part of another document, what must I do ~~if I submit my RAP application as part of another document~~? (§ 270.125) ~~(§270.82(e))~~ ~~In order~~

To avoid duplicative processes, today's rule (§ 270.80(d)) allows RAPs to be a part of another document, such as a State cleanup program's remedy selection document, or a workplan for a cleanup. In ~~most~~ many cases, the Agency expects RAPs to be issued at the time that a site manager is selecting a remedy, which will ~~generally~~ often include a mandatory process for including the public in the remedy selection process, and completion of remedy decision documents, under ~~that~~ a cleanup program. Therefore, it would be a waste of time and resources to require a separate RAP application. If the facility owner/operator is preparing the other document(s), then today's rule, at new § ~~270.82(e)~~ 270.125, allows the facility owner/operator to submit the RAP application as a part(s) of those documents. In this case, the rule requires that the facility owner/operator identify the parts of the document that make up the RAP application,

so that the Director can develop an appropriate draft RAP, and so the public can comment on it. Often, however, it will be the Director who is preparing the other documents, in which case, the facility owner/operator may choose to submit a separate RAP application, and the Director may incorporate the elements that make up the draft RAP into the other document(s) that he is preparing prior to public comment.

Provisions from the proposal that are not included in the final rule

The proposed rule required that "such [other] documents must be approved by the Director according to procedures that allow equivalent or greater opportunities for public involvement than those prescribed in § 269.43." This statement was confusing as to whether those "other" documents would be considered RAPs.

Any RAP application to receive approval as a RAP must follow the authorized RAP procedures of the authorized State or EPA. However, EPA expects that different States will apply for authorization of different types of programs and processes to qualify as RAPs. Therefore, RAPs in different States may look somewhat different, and the processes may vary, but all RAPs must be approved under a program authorized for this regulation.

Because this is already required under the State authorization procedures, and ~~so this~~ therefore language in the RAPs section of the regulations is not necessary, ~~so~~ EPA has not included it in the final rule. In addition, EPA intends it to be clear that the Director may do more in the way of public involvement than is required under today's rule and the facility owner/operator is certainly encouraged to do so. However, that is always possible ~~for~~ under RCRA authorized programs, and again it is not necessary to include this statement in the RAPs regulatory language.

As mentioned elsewhere, EPA has written the process for RAP approval to be as flexible as possible so that approval of RAPs, be they stand alone documents or parts of other documents, can be integrated as smoothly as possible into other approval and public comment procedures taking place at the site. EPA expects EPA Regional and State programs implementing the RAP provisions to merge processes at cleanup sites as much as possible to streamline the approval and public participation processes. At the same time, since RAPs will be issued under ~~the~~ a Federally authorized program, and will be Federally enforceable, it will be important for States to identify ~~where~~ when requirements are imposed under RAPs, and ~~where~~ when they are imposed under independent sate authority.

Getting a RAP Approved

L. What is the process for approving or denying my application for a RAP? (§ 270.130)

~~**How will my application for a RAP be approved or denied? (§ 270.83)**~~

~~Subsections 270.83(a) and (b)~~ Section 270.130 specifies ~~specify~~ the basis upon which the Director will determine whether to tentatively decide to either approve the RAP application and therefore prepare a draft RAP, or to deny the RAP application and therefore prepare a notice of intent to deny the RAP application ("notice of intent to deny"). If the Director finds that the RAP application includes all of the information required under § ~~270.82(b)(1-9)~~ 270.110 (correct signatures, names addresses, maps, drawings, specifications of the wastes; information to demonstrate compliance with applicable Part 264, 266 and 268 requirements; information necessary for the Regional Administrator to carry out his duties under § 270.3; and other information specified by the Director) and he determines that the information is in fact sufficient to show compliance with the regulatory standards, then he will make a tentative decision to

approve the RAP application and prepare a draft RAP. If the Director finds that the RAP application does not meet these criteria, and if the facility owner or operator fails or refuses to correct any deficiencies, then the Director will make a tentative decision to deny the RAP application, and prepare a notice of intent to deny. The most critical parts of the Director's determination is whether or not operation ~~in accordance with~~ according to the RAP will ensure compliance with applicable Part 264, 266, and 268 requirements.

As with any permit, the Director may deny the RAP application either in its entirety or in part. ~~In~~ If ~~either~~ the Director decides to either approve or deny the RAP application, ~~case of approval or denial, the Director~~ he will then solicit, consider, and respond to public comments before making his final decision on the RAP application. The Director's decision is called a "tentative" decision at this stage until he has solicited, considered, and responded to public comments.

Because it is important for the regulated community, the regulators, and the public to ~~have a clear understanding of~~ clearly understand the basis for the Director's decision to approve or deny a RAP application, EPA has added these provisions to provide clarity.

The proposed rule at § 269.43(e) simply stated that "[w]hen the Director determines that a draft RAP is complete and adequately demonstrates compliance with applicable requirements, the RMP shall be approved according to the [certain specified] procedures." Today's final rule provisions of § ~~270.83~~ 270.130 make express both what was meant by "complete and adequate," and the Agency's underlying assumption that, like the traditional permit process, the RAP approval process will be one of interaction between the applicant and the Agency. In addition, the regulations allow the Director to tentatively deny the RAP in whole or in part, where appropriate.

Thus, in a tentative permit decision, the Director would solicit public comment both on the parts of the RAP that are tentatively approved and on the parts that are tentatively denied.

As stated above, EPA expects the RAP approval process will be one of interaction between the RAP applicant and the Director until the Director is satisfied that he has enough information to tentatively approve or deny the RAP application. Thus, the rule has been written to make this expectation clear. Of course, the exact number of opportunities the Director should provide to correct deficiencies will depend on site-specific circumstances. The rule does make clear, however, that some opportunity to correct deficiencies must be given before a RAP application is denied.

M. What must the Director include in a draft RAP? (§ 270.135)

~~**How will the Director prepare a draft RAP or notice of intent to deny? (§ 270.84)**~~

Sections ~~270.84(a) and (b) specify what the Director must prepare for public comment on the RAP application. Section 270.84(a)~~ 270.135(a) and (b) specify ~~specifies~~ the contents of a draft RAP. In today's rule, EPA is allowing flexibility in the format for RAPs. EPA expects that the RAP application will form the basis of the draft RAP. EPA does not expect the regulatory agency to engage in a time-consuming process of re-creating or re-formatting all of the information in the RAP application. Generally, EPA believes that records of decision, workplans, and other documents developed under existing cleanup programs such as CERCLA and RCRA will provide good models for RAPs. Under § 270.135(a) and (b) the Director is required to include in the draft RAP:

1) the information from the RAP application discussed above (§ ~~270.82(b)(1-6)~~ 270.110(a) - (f)) ~~discussed above~~ (~~e.g.~~ for example, name of the facility, ID number, site boundaries, etc.); and

2) terms and conditions required under ~~§ 270.85~~ this section. ~~(e.g. for example, to ensure compliance with parts 264, 266 and 268, set forth in § 270.30, specifying modification, revocation, and reissuance and termination).~~

~~**What terms and conditions must a RAP include? (§ 270.85)**~~

Section ~~270.85~~ 270.135(b) specifies that RAPs must include:

(1) terms and conditions necessary to ensure that ~~operation in accordance with~~ ~~according to~~ ~~the provisions in the RAP will be in compliance~~ the operating requirements specified in the RAP comply with the applicable provisions of Parts 264, 266, and 268;

(2) ~~the~~ terms and conditions ~~set forth~~ in § 270.30;

(3) terms and conditions for ~~modification, revocation and reissuance, and termination~~ modifying, revoking and reissuing, and terminating the RAP; and

(4) any additional terms and conditions necessary to protect human health and the environment.

The Agency received no adverse comment on the proposed requirement that RAPs include terms and conditions that ensure compliance with the applicable provisions of Parts 264, 266, and 268 (proposed sections 269.40(b) and 269.41(c)(2)), and therefore today is finalizing this requirement at § ~~270.85(a)~~ 270.135(b)(i) with minor editorial changes. ~~In order~~ To promote streamlining, however, the final rule also expressly allows these requirements to be incorporated "expressly or by reference." In other words, ~~where~~ when RAP conditions are based solely on what is required by the regulations (~~i.e.~~ that is, there is no need to establish site-specific conditions), the RAP may either duplicate the text of the requirements from the regulations in describing what is required under the RAP, or may simply cite ~~to~~ the applicable requirements. Of course, many Subtitle C requirements, such as design requirements for CAMUs, temporary units,

and staging piles in Part 264, must be derived site-specifically, and therefore, must be included in each individual RAP if ~~such~~ these units will be used.

The Agency did not specifically request comment on requiring the terms and conditions in § 270.30 to apply to RAPs. However, the Agency believes ~~it is important to correct this oversight because~~ these terms and conditions provide legal clarity on such issues as "duty to comply," "duty to reapply," and "inspection and entry," and will ensure effective implementation of the RAP.

Therefore, EPA has added this requirement to RAPs at § ~~270.85(b)~~ 270.135(b)(2). Many of the conditions in § 270.30 will not apply to specific actions taken under a RAP. For example, if all remediation waste is managed on-site under the RAP, then there will be no requirement for manifests, and therefore the manifest discrepancy report required under § 270.30(l)(7) ~~would~~ will not apply to that RAP. Similarly, the monitoring requirements of § 270.30(j) would apply only to monitoring associated with units regulated under the RAP. It would not apply to general site investigation or monitoring at the cleanup site. In the future, EPA may further simplify these requirements and revise them so they are tailored more specifically to cleanup, and so that they provide greater flexibility.

Section ~~270.85(c)~~ 270.135(b)(3) requires the Director to include in the draft RAP the procedures for ~~modification, revocation and reissuance, and termination of~~ modifying, revoking and reissuing, and terminating the RAP, as is required under §§ ~~270.91(a) and § 270.92(a)~~ 270.175, 270.180 and 270.185. These procedures are discussed fully in the preamble sections discussing the procedures for modification, revocation and reissuance, and termination in §§ ~~270.91 and 270.92.~~ 270.175, 270.180 and 270.185.

Finally, the requirement of § ~~270.85(d)~~ 270.135(b)(4) for the Director to include "any additional terms or conditions necessary to protect human health and the environment," is simply a codification of RCRA § 3005(c)(3), commonly referred to as RCRA's "omnibus permit authority provision." This provision allows the Director to add terms and conditions necessary to protect human health and the environment as concerns the activities expressly permitted under the RAP.

However, the Agency has also added a degree of specificity to this provision in the final rule. Specifically, today's rule expressly provides that ~~such~~ these additional terms or conditions include, "any additional terms and conditions ... necessary to respond to spills and leaks during use of any units permitted under the RAP."

The Agency added this provision to clarify that, although ~~cleanup-only~~ remediation-only facilities are no longer subject to § RCRA 3004(u) facility-wide corrective action, they do not escape cleanup responsibilities for the units permitted by the RAP. Because any units permitted under a RAP will be subject to the applicable Part 264 requirements and must be approved by the Director in the RAP, EPA believes that most units will not experience problems with spills or leaks, because they will be well designed and maintained.

Also, most units permitted under RAPs will be shorter term than most units at operating TSDF, and so will be less likely to develop leaks. However, ~~in the event that such~~ if unlikely spills or leaks occur, ~~such~~ these units are not exempt from spill response and cleanup requirements specific to these units~~, which may address problems arising from these units~~. The omnibus provisions in § ~~270.85(d)~~ 270.135(b)(4) provide an added option for dealing with ~~such~~ these events from activities permitted under the RAP.

The RAP is not required to include information or conditions related to cleanup levels, site investigation, remedy selection, or similar requirements not specifically related to hazardous remediation waste management ~~otherwise~~ subject to RCRA permitting.

New section ~~270.84(d)~~ 270.135(c) provides that if the draft RAP is part of another document, as described in § 270.80(d)(2), the Director must clearly identify the components of that document that constitute the draft RAP. This is the same requirement for the Director as the earlier requirement for the RAP applicant (in new § ~~270.82(e)~~ 270.125), that if the RAP applicant prepares the RAP application as part of another document, ~~that~~ he must identify the portions of the other document that make up the RAP application. This simply allows for consolidation of documents ~~in the event that~~ when other decisions, such as remedy selection, are occurring at the same time as decisions on the RAP, and allows the Director to prepare only one document instead of several. This approach was proposed at § 269.40(e)(2) and EPA did not receive any negative comments on this procedure.

Provisions of the proposal that are not included in the final rule

The proposed rule also contained several additional requirements for RAP terms and conditions that the Agency is not finalizing today. First, during the development of the proposal, some of the FACA Committee members expressed concerns that ~~some~~ certain cleanup activities may unintentionally cause additional contamination through cross-media transfer of contaminants (~~i.e.~~ that is, transfer of contaminants to clean soil, air, and surface or ground water).

In response to these concerns, EPA proposed (at § 269.41(c)(7)) to require the facility owner/operator to submit information ~~which~~ that demonstrates that any proposed treatment system will be designed and operated in a manner that will adequately control the transfer of

pollutants to other environmental media. This aspect of the proposal was important because the proposal exempted significant portions of remediation waste from unit-specific standards.

However, in today's final rule all hazardous remediation wastes remain subject to Subtitle C requirements, including those designed to prevent cross media contamination (~~e.g.~~ for example, the requirements in § 264.175 for tanks, § 264.221 for surface impoundments, and § 264.251 for waste piles, covering such cross-media prevention techniques as liners and covers, and controls to prevent migration into groundwater or surface water). This requirement therefore is no longer generally necessary and the Agency did not include it in the final rule. In addition, the Director may address any remaining concerns ~~regarding~~ about cross-media transfer of contaminants related to the remediation waste management activities permitted by the RAP ~~can be addressed by the Director~~ under the Agency's omnibus permitting authority, addressed above.[12]

In addition, sections 269.43(c) and (d) of the proposal allowed the Director to add provisions to the RAP specifying the conditions under which the owner/operator would manage media ~~would be managed~~ under a RAP, and concentration levels below which the Director would no longer consider the media ~~would no longer be considered~~ to contain hazardous waste, and to

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[12] In addition to the existing regulatory requirements, ~~it should be noted that~~ since proposal, EPA has developed the *Best Management Practices (BMPs) for Soil Treatment Technologies* (EPA530-R97-007, May 1997) guidance document ~~to provide guidance~~ on how to identify and minimize the potential for causing cross-media contamination during implementation of cleanup technologies for contaminated soils or solid media. The guidance outlines the potential cross-media concerns for specific activities and recommends approaches for preventing cross-media transfer of contaminants. Its primary purpose is to prevent the cross-media transfer of contaminants during implementation of contaminated soils or solid media treatment technologies in compliance with applicable State and/or Federal regulations.

This document does not replace any existing State or Federal regulations or guidance. It was developed to support ~~implementation of~~ the HWIR-media rule. The BMPs guidance was not developed for and should not be used as a compliance guide for any particular set of cleanup standards, but instead ~~should be used~~ as a reference during implementation of those standards. Similarly, BMPs are not meant ~~to be used~~ as a selection tool for remedial treatment technologies; they should be used during the implementation stage of remedies once they are selected. The facility owner/operator and the Director should consider whether this guidance will provide helpful recommendations for the remediation waste management taking place under the RAP.

add provisions (if necessary) specifying when the Director would consider threats to human health and the environment from the media to ~~would~~ be minimized. These provisions were based on the proposed rule's provisions that would allow the Director to exempt hazardous contaminated media from Subtitle C if it were below the proposed Bright Line levels~~, and the Director made a determination that the media did not contain hazardous waste~~ (see proposed § 269.4, and preamble about the Bright Line at 61 FR 18794; about the LDR requirements at 18804; and about treatability variances at 18810).

In some cases, under the proposal, the media would have been exempt from most of Subtitle C, but remain subject to LDR treatment standards. In those cases, the Director might specify minimize threat levels ~~pursuant to~~ under a treatability variance as an alternative LDR level (instead of requiring treatment to the levels required in Part 268). This approach was finalized in the recent Phase IV Land Disposal Restrictions Rule (63 FR 28556 (May 26, 1998)).

N. What else must the Director prepare in addition to the draft RAP or notice of intent to deny? (§ 270.140)

Once the Director has prepared the draft RAP or notice of intent to deny, section ~~270.84(b)(1)~~ 270.140(a) requires the Director to prepare a statement of basis supporting the RAP decision. Section ~~270.84(b)(2)~~ 270.140(b) requires the Director to compile an administrative record and specifies the contents of the administrative record for the draft RAP, which are:

1) the RAP application and any supporting data;

2) the draft RAP or notice of intent to deny;

3) the statement of basis and all the documents cited in the statement of basis; and

4) any other documents supporting the decision to approve or deny the RAP.

Today's rule also provides that any documents which are readily available to the public do not need to be physically included in the administrative record as long, as ~~such~~ these documents are specifically referenced. This eliminates the need to unnecessarily copy documents such as regulations and statutes, and other commonly available documents, and to crowd each administrative record with documents that can be easily found elsewhere.

The statement of basis and the administrative record are essential to explain and document the basis for the Director's decision to approve or deny the RAP, and ~~in the event that~~ if the RAP is appealed, they provide the record for review by the Environmental Appeals Board or similar State body. The information in the administrative record allows members of the public to review the basis for the Director's decision in order to participate in a meaningful way during the comment period ~~on the RAP~~. The requirements for a statement of basis and administrative record are the same as the requirements of §§ 124.7 and 124.9 for other RCRA permits, except that they have be re-worded to be more readable.

The proposed rule did not allow for administrative appeals and did not expressly require a statement of basis or compilation of an administrative record. However, because (in response to public comments) the final rule does allow for administrative appeals, as discussed later, the statement of basis and administrative record are essential to successful operation of the appeals process, and EPA has therefore added them to the requirements for RAPs in today's final rule.

New section ~~270.84(c)~~ 270.140 (c) requires that information contained in the administrative record be made available for public review upon request. This ensures that the public can review all relevant documents in preparing ~~public~~ their comments on the draft RAP.

O. What are the procedures for public comment on the draft RAP or notice of intent to deny? (§ ~~270.86~~ 270.145)

A description of the requirements

Today's rule sets out procedures for reviewing and ~~approval~~ approving ~~of~~ RAPs. EPA considers public review and comment procedures ~~to be~~ an extremely important part of the review and approval process for remedial activities. EPA recognizes that remediation waste management activities will vary greatly in scope and risk involved, and the Agency in turn believes that public participation should vary depending on the scope and risk involved with the remediation waste management taking place. EPA expects that States that apply for authorization for today's rule may request authorization for programs that vary somewhat from today's requirements, and EPA wants to allow for flexibility in this process. EPA expects States and Regions issuing RAPs to make appropriate decisions about what levels of public participation are appropriate in different situations. However, ~~in order~~ to receive authorization for RAPs, States must at least require the minimum public participation requirement ~~required~~ mandated by RCRA § 7004(b) and must have requirements equivalent to the other requirements of today's rule. For further discussion of State authorization issues, see the State Authority section of today's preamble.

EPA is finalizing its proposal to require the use of the statutory public participation requirements ~~set out~~ in RCRA section 7004(b). Thus, if the Director makes a tentative decision to approve or deny the RAP application, he must:

- ~~§ 270.86(a)(1) requires him to~~ Send notice to the facility owner/operator of his decision with a copy of the statement of basis (§ 270.145(a)(1);
- ~~Section 270.86(a)(2) requires the Director to~~ Publish that decision in a major local

newspaper of general circulation (§ 270.145(a)(2); ~~and~~

- ~~§ 270.86(a)(3) requires him to~~ Broadcast his decision over a local radio station (§ 270.145(a)(3);
- ~~Section 270.86(a)(4) requires the Director to Transmit a written~~ Send a notice of his intent to approve or deny the RAP to each unit of local government having jurisdiction over the area in which the site ~~was~~ is located, and to each State agency having any authority under State law with respect to any construction or operations at the site (§ 270.145(a)(4).

This was proposed at § 269.43(e)(1)(i) and (ii).

Section ~~270.86(b)~~ 270.145(b) requires that this notice provide the public with the opportunity to submit written comments on either the draft RAP or the notice of intent to deny within no fewer than 45 days. This was proposed at § 269.43(e)(1)(ii).

Section § ~~270.86(c)~~ 270.145(c) specifies the information requirements for the notice, which are:

(1) the name and addresses of the office processing the RAP application;

(2) the name and address of the RAP applicant and the site or activity;

(3) a description of the activity;

(4) the name, address, and phone number of a person from whom interested persons may obtain further information;

(5) a description of the comment procedures and other procedures by which the public may participate;

(6) if a hearing is scheduled, the date, time, location, and purpose of the hearing;

(7) if a hearing is not scheduled, a statement of procedures to request a hearing;

(8) the location of the administrative record and times ~~at which~~ when it will be open for public inspection; and

(9) additional information the Director considers necessary or proper.

These ~~information~~ requirements ~~make sure~~ ensure that the public will have enough information to participate in a meaningful way in the comment process.

The proposed rule required the same procedures. Proposed § 269.43(e)(i) required notice according to the procedures of 40 CFR 124.10(d) for the contents of the notice. In the final rule, EPA has incorporated applicable requirements of § 124.10(d) directly into the regulations for RAPs (with non-substantive changes made to incorporate the requirements into today's readable format) to avoid potentially confusing cross-referencing.

Section 270.~~86~~ 145(d) requires that if within the comment period the Director receives written notice of opposition to his decision to approve or deny the RAP and a request for a hearing, the Director must hold an informal public hearing. The Director may also determine on his own initiative that a hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must:

- schedule the hearing at a location ~~that is~~ convenient to the nearest population center to the remediation waste management site;
- ~~and~~ give notice again in the newspaper and on the radio and to the local government including the information described above, and;
- (1) reference ~~to~~ the date of any previous public notices relating to the RAP application;

  (2) include the ~~hearing's~~ date, time, and place of the hearing; and

(3) provide a brief description of the nature and purpose of the hearing, including procedures.

Again, these hearing requirements are identical to what was proposed at § 269.43(e)(2), but with minor editorial changes to increase readability. These requirements are also required under RCRA § 7004(b).

Commenters requested more flexibility

Several commenters requested additional flexibility in the public participation process under today's § 270.~~86~~ 145 requirements. Commenters suggested that RAPs for media that were excluded from Subtitle C should not have to follow the RCRA statutory public participation requirements. Today's rule does not exempt any hazardous remediation waste from Subtitle C, so RAPs always must serve as RCRA permits and must follow the RCRA statutory requirements for permits. Commenters specifically mentioned the 45-day comment period, the requirement to hold a hearing if one is requested, and the requirement to send a copy of the RAP to each State agency having any authority under State law with respect to any construction or operations at the site. Commenters generally suggested that EPA should allow flexibility in how public participation was performed, depending on the activities taking place at the site.

However, under today's rule, RAPs constitute RCRA permits, and therefore, the statute mandates certain very specific public participation activities in RCRA 7004(b) including the 45-day comment period, hearings, and sending copies of the RAP to State agencies. EPA has limited any additional specificity (~~e.g.~~ for example, the requirements for the contents of a notice in today's § 270.~~86~~ 145(c)) in today's rule to information or procedures ~~that are~~ necessary for smooth implementation of those statutory requirements, and has not included other procedural

requirements, such as §§ 124.31 - 124.33.

The requirements in § 270.~~86~~ 145(a)(2), (3), (4), (b) and (d) are direct requirements from ~~the statute~~ section 7004 of RCRA. The only requirements that EPA has added beyond the statutory requirements are:

- for the Director to send a notice of his decision to the RAP applicant (§ 270.145(a)(1));
- the content requirements for the public notice of the RAP decision (§ 270.145(c)); and
- the content requirements for the public notice for any hearings (§ 270.145(d)(1) - (3).

EPA believes that it is important to notify the RAP applicant of the Director's decision, and ~~EPA believes that it is important~~ for public notices to include ~~consistent~~ sufficient information ~~regarding~~ about RAP decisions and public hearings to allow meaningful public participation. This is why EPA has added these few requirements to the statutory minimum procedures, and these requirements are the same as the equivalent requirements for traditional RCRA permits. It is, however, the Agency's policy on public participation to stress the importance of appropriate public participation in environmental decision-making.

EPA has acknowledged repeatedly that ~~it~~ the Agency believes that the RCRA statute is overly prescriptive ~~when it defines~~ in its definition of public participation requirements for RCRA permits applying to remediation-only sites. Indeed, cleanups under EPA's own Superfund program -- which provides a full and extensive opportunity for public participation -- might not meet ~~every one~~ all of the RCRA statutory standards. Ideally, EPA would provide significantly greater latitude for State programs in today's rule; however, ~~it~~ the Agency believes it is constrained by the statute. For this as well as other reasons, the Administration is supporting legislative reform of RCRA specific to remediation waste.

P. The importance of public involvement in the RAP process

It is EPA's policy to encourage public involvement early and often in the permitting process, in its remediation programs, as well as in other Agency actions. EPA intends this rule, and its implementation, to be consistent with that policy.

EPA also recognizes that existing State and Federal authorities provide for public involvement through widely varying processes. EPA, in crafting today's rule, intends to provide ~~sufficient~~ enough procedural flexibility so that States ~~would~~ will not either have to modify the public involvement provisions of their existing cleanup programs to avoid conflicts with RAP provisions ~~which~~ that will govern public participation on the hazardous remediation waste treatment, storage, and disposal aspects of their cleanups, or have to engage in two potentially duplicative sets of public participation procedures.

Today's rule establishes the minimum procedures for public involvement -- public notice and opportunity for comment. EPA recognizes that meaningful public participation ~~is achieved when~~ means that all potentially ~~impacted and~~ affected parties have an opportunity to participate early in the process and have ample time to participate in the remediation waste management decisions. ~~and~~ EPA also believes that particular situations may warrant more than these minimum requirements.

This rule provides the opportunity for public involvement by requiring, at a minimum, public notice and an opportunity for comment when the authorized regulatory agency makes a preliminary decision to either approve or deny a draft RAP. By requiring public notice of activities at a site, the Agency intends this rule to encourage involvement of the public throughout the remediation waste management process.

In general, the level of public involvement will depend on the action -- for example, the Agency may simply provide opportunity for public comment on a proposed RAP for on-site storage of waste with low levels of contamination before it is removed, but higher levels of involvement ~~may be called for~~ when a RAP includes treatment of a large quantity of remediation waste or on-site waste disposal. For these reasons, EPA believes that public involvement should be tailored to the needs at the site, and has therefore provided necessary flexibility in this rule.

Some cases may warrant more than notice and opportunity for comment. The Director or the facility owner ~~or~~ /operator may choose to voluntarily ~~to~~ take additional steps beyond what is required in today's regulations when ~~such~~ additional involvement is warranted. In some cases, meaningful public notice may include bilingual notifications, publication of site fact sheets or of legal notices in city or community newspapers (or other media, such as radio, church organizations, and community newsletters) at key milestones in the remediation waste management decision process. Existing forums of communication, such as regular community meetings and electronic bulletin boards can be used to provide regular progress reports on remediation waste management activities.

EPA has long recognized ~~since the beginning of the RCRA program~~ that the level of public involvement should be determined by the action taking place. For example, in a final rule dated September 28, 1988, (53 FR 37936), EPA promulgated regulations to govern modification of permits. Those regulations established different levels of public involvement depending on the significance of the permit modification.

Class 1 modifications, which apply to minor changes to permits, require minimal public involvement. The permittee must send a notice of the permit modification to all persons on the

facility mailing list, and to the appropriate units of State and local government. Interested persons may request review of these permit modifications.

Class 2 permit modifications require increased public involvement, and Class 3 modifications, for major modifications to permits, require far more extensive involvement of the public -- publication in a local newspaper, a public meeting, and a public comment period. To assist facility owners and operators in implementing the rule, ~~in Appendix 1 to section 270.42,~~ EPA classified different activities as Class 1, 2, or 3 modifications, based on the significance of the action in Appendix 1 to section 270.42.

EPA has also issued guidance on public involvement which may, as appropriate, be used as guidance in implementing today's rule (see the *RCRA Public Participation Manual*, September, 1996, EPA 530-R-96-007). This manual provides guidance on addressing public participation in the permit process, including ~~the~~ permitting and ~~enforcement of~~ enforcing corrective action activities. The manual emphasizes the importance of cooperation and communication and highlights the public's role in providing valuable input. It stresses the importance of early and meaningful involvement of the public in Agency activities, and of open access to information.

In addition to the manual, EPA fully encourages the Director and the RAP applicant to consider, as appropriate, *The Model Plan for Public Participation*, developed by the *Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council* (a Federal Advisory Council to the U.S. Environmental Protection Agency) when taking actions that would benefit from additional public involvement beyond what is required in today's rule. The Model Plan encourages public participation in all aspects of environmental decision

making. It emphasizes that communities, including all types of stakeholders, and regulatory agencies should be seen as equal partners in any dialogue on environmental justice issues. The model also recognizes the importance of maintaining honesty and integrity in the process by clearly articulating goals, expectations, and limitations.

Most recently, the Agency issued the Enhanced Public Participation Rule (60 FR 63431, (December 11, 1995)), which amended 40 CFR Parts 124 and 270 to provide for public participation earlier in the permitting process, and expanded public access to information throughout the permitting process and the operational lives of facilities. It requires the person associated with the facility, usually the facility operator, to notify the public before applying for a permit under § 124.31.

The Agency encourages ~~the use of this~~ using this rule, as appropriate, as guidance for cleanups that require a RAP, especially when there is a highly toxic or large volume of remediation waste. Where a cleanup involves ~~treatment, storage or disposal~~ treating, storing or disposing of hazardous remediation waste and a RAP is issued, public participation on the RAP should generally be folded into the broader strategy for encouraging public involvement in the cleanup. EPA encourages regulators and facility owners ~~and~~ /operators implementing the provisions of today's final rule to refer to these regulations and guidance documents as guidance in developing appropriate public participation activities for individual RAPs.

Q. How will the Director make a final decision on my RAP application? (§ 270.~~87~~ 150)

A description of the requirements

Section 270.~~87~~ 150(a) requires the Director to consider and respond to any significant

comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny. Sections 270.~~87~~ 150(b) and (c) require that, when the Director has responded to all significant comments and revised the RAP as appropriate and has determined whether the RAP includes all the required information and terms and conditions, he must issue a final decision on the RAP application, and ~~in writing~~ notify in writing the RAP applicant and all commenters on the draft RAP or the notice of intent to deny. ~~Under new §§ 270.87(b) and (c), once the Director has made his finding, he will notify the facility owner/operator and all commenters on the RAP of his decision.~~ This was proposed at § 269.43(e)(4), on which the Agency received no adverse comment.

Section 270.~~87~~ 150(d) specifies that if the Director's final decision is that his tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP. ~~To complete the process where when the Director determines that his tentative decision to deny a RAP was incorrect, the requirements of new § 270.87(d) require the Director to withdraw the notice of intent to deny and proceed with the appropriate procedures for approval of approving a RAPs.~~ This is the same as the approach taken for traditional RCRA permits (see § 124.6(b)), and the Agency sees no reason to deviate from that approach in today's rule.

Under new § 270.~~87~~ 150(e), when the Director issues his decision, he must include reference to the procedures for appealing the decision. Because appeals were not provided for in the proposed rule, this is a new requirement EPA has added to the final rule. This is the same requirement as for permits under § 124.15(a), and EPA did not see any reason to differ from these existing requirements for permits.

New section 270.~~87~~ 150(f) requires that, ~~prior to~~ before issuing the final RAP decision, the Director ~~must~~ compile an administrative record that includes the information from the administrative record from the draft RAP and also:

(1) all comments received;

(2) tapes or transcripts of hearings;

(3) written materials submitted at hearings;

(4) responses to comments;

(5) new material placed in the record since ~~issuance of~~ the draft RAP was issued;

(6) other documents supporting the RAP; and

(7) the final RAP.

This section again repeats that material readily available need not be included. This is the same as for the administrative record for draft RAPs and also for traditional RCRA permits

Section 270.~~87~~ 150(g) requires that the administrative record must be made available for review by the public upon request.

As described for the administrative record for the draft RAP, EPA believes that express requirements for ~~the compilation of~~ compiling administrative records are essential for successful hearing of appeals, and because appeals were not permitted in the proposal, EPA did not include this requirement in the proposal. However, an administrative record is now a necessary part of today's final rule. The ~~selection of~~ elements of the administrative records for RAPs are ~~is~~ the same as those required for traditional RCRA permits under § 124.18. EPA believes that the same information that is necessary to understand the decision-making on a traditional RCRA permit is also ~~necessary~~ appropriate for RAPs.

Comments on the proposed requirements

The proposed rule requirement for the Director to consider and respond to any significant comments, and to modify the RAP as appropriate, was at § 269.43(e)(3). (The final rule uses the word "revised" instead of "modified" to avoid confusion with §§ 270.~~91~~ 170 and 270.175 pertaining to post-issuance modifications.) Several commenters were concerned that the Director would unilaterally modify RAPs due to public comments without consulting with the facility owner or operator. They asked that EPA require the Director to consult or negotiate with the facility owner or operator before making modifications due to public comment. One commenter explained that changes resulting from public comment may substantially increase the cost of compliance, or otherwise significantly affect the facility's ability to complete remedial actions, in which case the facility would have no choice but to comply, or suspend remedial activities while seeking judicial review. Commenters were also concerned that any action that requires approval from the Agency ~~becomes delayed~~ takes a very long time to get approved. The commenter asked for EPA to ~~set a time~~ limit ~~on~~ the Director's review period to 60 days, and if the Director had not acted on the RAP within 60 days, the RAP ~~it~~ would go into effect automatically.

EPA considers open communication with the facility owner/operator important to successful implementation of the RCRA program. EPA encourages Regional offices and States implementing today's rule to discuss, when appropriate, any revisions that may be made to the RAP in response to public comment with the facility owner/operator before making them. ~~EPA~~ The Agency has not added this as a requirement to the approval process, however. An overriding objective of today's rule is to eliminate unnecessary process from the regulations. The Agency believes that a mandatory consultation process such as that suggested by the commenter is

unnecessary because today's rule, unlike the proposal, provides for appeal of the Director's final decision to EPA's Environmental Appeals Board. Facility owner/operators ~~that~~ who are unhappy with changes made in response to public comment will have ample opportunity, at that time, to convince the Agency to change the contested provisions.

EPA has also decided not to limit the amount of time the Director has to review and approve RAPs ~~such~~ so that if the Director does not act, the RAP becomes effective. EPA does not believe that the Agency would be fulfilling its statutory obligation to ensure compliance with RCRA requirements if RAPs could become effective without an affirmative decision from the Director (see RCRA § 3005). In addition, this would be especially problematic because under new § 270.90, the RAP generally serves as a shield against enforcement, and therefore the Director must make an affirmative decision that the RAP will ensure compliance with the applicable Subtitle C requirements before the RAP can become effective.

Commenters also asked that the facility owner or operator be required to provide copies of all documents he is required to maintain during the remedial activity into a local library to allow for public review. EPA encourages any steps the Director can take to facilitate meaningful public involvement, but again has chosen to limit actual regulatory requirements in an effort to maintain a more flexible process. EPA already requires the Director to make the administrative record available under both §§ 270.~~84~~140(c) and 270.~~87~~150(g). In addition, the Director can require the facility owner/operator to set up an information repository as a part of the RAP under the terms and conditions imposed at § 270.~~85~~135, if the Director considers ~~such~~ a repository appropriate. We believe these authorities allow the full range of options to assure easy public access to information so that meaningful public involvement can occur.

The requirement for the Director to make a determination at § 270.~~87~~ 150(b) and (c) was proposed at § 269.43(e)(4), and ~~which~~ stated "When the Director determines that the RMP adequately demonstrates compliance with all applicable requirements...." The requirements in § 270.150 of today's final rule clarify what the proposal meant by "all applicable requirements."

The proposed rule did not expressly outline the procedures ~~in the event~~ if the Director decided to deny a RAP. This was an oversight. To correct that oversight, EPA has made denial procedures for RAPs equivalent to approval procedures for RAPs.

R. ~~Can~~ May the ~~Regional Administrator's~~ decision to approve or deny my RAP application be administratively appealed? (§ 270.~~89~~ .155)

The Agency had originally proposed to eliminate administrative appeals (~~i.e.~~ that is, to the EPA Environmental Appeals Board) because ~~it was~~ EPA felt that allowing facility owner/operators to proceed directly to judicial review (if necessary) after the ~~Regional Administrator's~~ Director's decision on the RAP would streamline the process. However, numerous commenters did not believe that this particular part of the proposal resulted in any beneficial streamlining. Commenters expressed an interest in being able to avoid expensive and time-consuming judicial proceedings by first requesting an administrative appeal. ~~Additionally~~ Also, one commenter pointed out that in instances where the RAP applicant is a Federal agency, the judicial review process is not available because Federal administrative agencies are unable to seek judicial review of final actions of other Federal administrative agencies. No commenters wrote to support EPA's proposal to not provide for appeals.

The Agency agrees with these commenters that allowing for further review within the Agency will, in many cases, ~~result in the avoidance of~~ help avoid time-consuming and costly litigation. Because, in the remediation setting, this is time and money better spent ~~in~~ on cleanups, the Agency has decided in this final rule to provide for administrative appeals for RAPs. Thus, the procedure in new § 270.~~89~~ 155 requires facility owner/operators to follow the procedures of § 124.19 for appeals. The only ~~change EPA has made to this~~ difference between the process EPA requires for RAPs, and the traditional § 124.10 requirements is that when the ~~Regional Administrator~~ Director ~~will~~ gives public notice of appeals decisions for RAPs, ~~which is required~~ (under section 124.19(c)), he will follow ~~in accordance with~~ the RAPs public participation procedures in section ~~270.86(a)~~ 270.145 instead of those in section 124.10, which are used to give public notice of appeals decisions for traditional RCRA permits.

~~This section of the final RAPs regulatory language is not applicable to a required element for State programs. This is EPA did this to be consistent with the Part 124 requirements for appeals. EPA felt it was important to remain consistent with part 124 in this area. Although permit appeals are not required as a condition of authorization for State programs, Most States have an appeals process similar to the Federal process, however, the current permit requirements do not require States to have a permit appeal process. EPA sees no reason to change this approach for remediation-only permits. However, requiring this section of the regulations for to be applicable to State programs would require that States programs, as a part of the authorization process, be reviewed as part of authorization to ensure that their appeals process was no less stringent than the Federal process. EPA does not wish to require States that may have a slightly different appeals process to have to change their processes in order to receive~~

authorization for RAPs. Therefore, States are not required to adopt this provision. this requirement is not applicable to State programs. There are Two other sections of the regulations that are similarly not applicable to a required element for State programs for the same reason; the appeals process for approval or denial of RAP modifications, terminations, or revocations and reissuance (§ 270.93), and the computation of time when used in Part 270 Subpart H (§ 270.95).

Sections 270.89 155(a)(1) - (3) include requirements for what the public notice of the appeal must include, which are: (1) the briefing schedule for the appeal; (2) a statement that any interested person may file an amicus brief with the Environmental Appeals Board; and (3) the appropriate information from § 270.86 145(c), such as the name and address of the remediation waste management site and a description of the proposed activities.

The requirements under § 270.89 155(a)(1) and (2) for what to include in the public notice already appear in § 124.19(c), but are repeated in § 270.89 155 for clarity. Section 124.19(c) also specifies that public notice of appeals decisions will be given as provided in § 124.10. However, EPA has specified in today's rule that public notice of appeals decisions for RAPs will be given according to follow the procedures of § 270.86(a) 270.145, and will contain the information from § 270.86 145 (c), instead of § 124.10.

For the sake of clarity, new § 270.89 155(b) repeats the requirement in § 124.19 's requirement that exhaustion of exhausting the administrative appeals procedure of section 124.19 is a prerequisite to judicial review under RCRA section 7006(b). This is the same requirement as is currently required in place for traditional RCRA permits under § 124.19(e), and EPA saw no reason to differ from the current requirements for permits.

S. When does my RAP become effective? (§ 270.~~88~~ 160)

Section 270.~~88~~160 states that the RAP is effective 30 days after the Director has notified the facility owner and operator and all commenters that he approves the RAP. This is the same as the effective dates for traditional RCRA permits. The 30-day period allows time for parties to appeal the Director's final decision before the RAP is effective. EPA stated in the preamble to May 19, 1980 rulemaking, when these provisions for permits were promulgated, that the 30 days "is a necessary part of a party's right to request an evidentiary hearing."

Under § 270.~~88~~ 160(a)~~(1)~~, the Director may specify a later effective date in the final RAP decision if he feels that a longer time is necessary to allow facility owners and operators more time to come into compliance with the new requirements, or knows of other necessary reasons for a later effective date ~~why it might be necessary~~.

Section 270.~~88~~ 160(b)~~(a)(2)~~ specifies that if a RAP has been appealed, and the appeal is granted, conditions of the RAP will be stayed ~~in accordance with~~ according to the provisions of § 124.16, pending the outcome of the appeal. The Director may identify which conditions of the RAP are severable, and therefore are not stayed. However, the provisions that are appealed and any provisions that are not severable from the appealed provisions will be stayed.

Section ~~270.88(a)(3)~~ 270.160(c) specifies that the RAP may become effective immediately if no commenters requested a change from the draft RAP. This is because if no one requested a change, then no one would have the right to an appeal. Only parties who ~~make comments~~ comment on the draft RAP may request appeal.

The proposed rule did not specify effective dates for RAPs. This was an oversight EPA has corrected in today's final rule. These effective date requirements are the same as ~~are~~ those

currently required for traditional RCRA permits under § 124.15(b), and EPA saw no reason to differ from these existing requirements ~~for permits~~.

T. When may I begin physical construction of new units permitted under the RAP? (§ 270.165)

Section ~~270.88(b)~~ 270.165 specifies that the RAP applicant cannot begin physical construction of new units ~~prior to~~ before receiving a finally effective RAP. This is the same as the requirements for traditional RCRA permits at § 270.10(f)(1).

How may my RAP be modified, revoked and reissued, or terminated?

U. After my RAP is issued, how ~~can my RAP~~ may it be modified ~~after issuance, or~~ revoked and reissued, or terminated? (§ 270.~~91~~ 170)

Plans for remedial actions sometimes need to be modified, ~~or~~ revoked and reissued, or terminated. Often, modifications, ~~or~~ revocations and reissuances, or terminations are necessary as new information becomes available. ~~In order~~ To retain reasonable flexibility in the remedial process -- where it is difficult to predict all contingencies, and where different State programs may have different existing requirements for when plans need to be modified, ~~or~~ revoked and reissued, or terminated -- today's rule (as did the proposal), does not include specific procedures for RAP modification, revocation ~~or~~ and reissuance, or termination but requires the Director to specify ~~such~~ these procedures in the RAP. This ~~allows~~ provides authorized State or Federal programs the ability to allow modifications, revocations and reissuances, and terminations when and how they would fit efficiently into the State or Federal program. Today's rule at § ~~270.91(a)~~ 270.170

requires (the same as the proposal) that the Director include these procedures in the RAP, and also requires that these procedures provide for public review and comment if there is a "significant" change in the management of hazardous remediation waste at the site, or in circumstances which otherwise merit public review and comment. This was proposed at § 269.44(a) and is consistent with EPA's preference for involving the public in important decisions.

While commenters agreed with this general approach, two commenters asked for clarification on what constitutes a "significant" modification. EPA expects the Director to consider examples such as changes in treatment processes, ~~or utilization~~ use of new units, or activities that would require Class 2 or 3 modifications in Appendix 1 to § 270.42 as "significant" modifications (see also § 270.42(d)(2)). EPA expects that activities that would require Class 2 or 3 modifications would generally be the same kinds of activities that would be considered "significant" in this case. However, because activities that take place at cleanup sites are so often influenced by the site-specific factors that affect the management of remediation wastes at each site, EPA has decided not to put any limits into the regulatory language defining a "significant" change. This allows the Director full discretion to determine what constitutes "significant" for any given site.

The proposed regulatory language explaining which modifications should include public participation included modifications that were "major or significant." EPA considers "major" and "significant" to mean the same thing in this instance -- and so has eliminated that redundancy by limiting the final rule to the term "significant."

Proposed § 269.44 ~~only~~ referred only to modifications and not to revocation and reissuance, which was an oversight. Proposed § 269.45 included revocation with expiration and

termination. The requirements for both proposed sections were the same, stating that the Director would specify procedures for these actions. EPA has decided to move the ~~discussion~~ requirement to specify procedures for all these activities into one section (§ 270.170) because the same requirement applies to all of these activities, that the Director must specify procedures for modification, revocation and reissuance, and termination in the RAP. ~~of revocation and reissuance in the final rule to the section with modifications, because that is how they are grouped in the regulations for traditional RCRA permits. The Agency believes that it will be easier for the regulated community and regulators to understand the RAP regulations if they are structured in similar ways to the traditional RCRA permit regulations.~~

Today's final rule also allows the Director to specify ~~such~~ these modification, revocation and reissuance, or termination procedures individually or to incorporate them by reference. EPA expects that State programs may already have or may develop standard modification and revocation and reissuance procedures. EPA intended for the proposed rule language, which simply stated that the "Director shall specify ... procedures," to allow States having existing procedures to incorporate these procedures by reference, but the final rule language makes that explicit. EPA believes that incorporating already approved procedures by reference can save time and controversy in preparing and approving RAPs.

Section ~~270.91(a)~~ 270.170 also specifies that if your RAP has been incorporated into a traditional RCRA permit, then the RAP will be modified, ~~or~~ revoked and reissued, or terminated ~~in accordance with~~ according to the applicable traditional RCRA permit requirements. Of course, the Director may, as appropriate, specify in the RAP additional grounds or procedures, at his discretion. This is conforming change to make this requirements consistent with § 270.~~81~~ 85(c),

which allows RAPs to be incorporated into traditional RCRA permits.

V. For what reasons may the Director choose to modify my final RAP? (§ 270.175)

Today's rule ~~also~~ specifies at § ~~270.91(b)~~ 270.175 that the Director may determine on his own initiative that a modification is necessary. New sections ~~270.91(b)(1) - (5)~~ 270.175(a)(1) - (8) specify the causes that justify a Director-initiated modification. The only cause specified in the proposal for Director initiated modifications was "new information which indicates that such modification may be necessary to ensure the effective implementation of remedial actions at the site" (see 61 FR 18854). The Agency received no adverse comment on limiting the Director's discretion in this area. However, the Agency has decided to clarify the causes for Director-initiated modifications in today's RAPs regulations to include the same causes for Director-initiated modifications as for traditional RCRA permits under §§ 270.41 and 270.43. EPA believes this is an outgrowth of the proposed ~~cause~~ requirement, and responds to commenters' concerns that the Director had too much discretion as to when he could modify RAPs.

As discussed above, the proposed rule ~~contained provisions allowing~~ allowed the Director to make "unilateral" modifications based on "new information which indicates that such modification may be necessary to ensure the effective implementation of remedial actions at the site." Commenters expressed concern about what they saw as the Director's too-broad discretion to make "unilateral" modifications. In response to these comments, today's final rule requirements for "causes" adds more specificity to what that "new information" may be.

Section § 270.175(b) allows the Director to modify the RAP as necessary to ensure the facility continues to comply with the currently applicable requirements of Parts 124, 260-266 and 270 when he reviews a RAP for a land disposal facility every five years, as is required under §

270.195. This same requirement applies to traditional RCRA permits under § 270.41(a)(5).

Also to protect the facility owner/operator, at new § ~~270.91(d)~~ 270.175(c) the Agency has included the provision that applies ~~to permits~~ currently to traditional RCRA permits which specifies that the Director will not reevaluate the suitability of the location of the facility at the time of RAP modification ~~or revocation and reissuance~~. This would cause too much disruption to facility operations. The location will be evaluated once when the RAP is initially approved, but once approved it will not be reevaluated unless new information or standards indicate that a threat to human health or the environment exists ~~which~~ that was unknown at the time of RAP issuance.

W. For what reasons may the Director choose to revoke and reissue my final RAP? (§ 270.180)

The Agency has ~~also~~ specified in new § ~~270.91(c)~~ 270.180(a) causes for when the Director may modify or revoke and reissue a RAP. Again, these causes are the same as those for permits under the current regulations at §§ 270.41 and 270.43, and are intended to provide assurance to the facility owner/operator ~~with a~~ security that they can operate in compliance with their permit without fear that their permit will be modified ~~unless~~ without a good cause ~~exists~~. ~~In the same way as RAPs, the traditional RCRA permit requirements, the new RAP provisions allow more causes for modification than is are allowed for revocation and reissuance. Therefore, the causes that can only justify only modification are listed in (b), and the causes that can justify either modification or revocation and reissuance are listed in (c).~~

EPA explained its original reasoning for promulgating causes for Director-initiated modifications and revocation and reissuances of traditional RCRA permits at 45 FR 33314 (May 19, 1980). That preamble stated that "EPA has rewritten the permit modification section ... to

provide greater certainty to permittees during the period when they hold permits and thereby make it easier to make business decisions and obtain financing...Normally, a permit will not be modified during its term if the facility is in compliance with the conditions of the permit. The list of causes for modifying a permit is narrow; and absent cause from this list, the permit cannot be modified." In that notice, EPA also explains the specific rationale for each of the causes for Director-initiated modifications, revocations and reissuances, which are the same causes as allowed in today's rule. EPA included the same protection for owners and operators when RAPs are revoked and reissued at § 270.180(b) as is provided for when RAPs are modified at § 270.175(c). That is that the Director will not reevaluate the suitability of the location of the facility at the time of RAP revocation and reissuance. The reasons for this protection are discussed above at section § 270.175(c).

X. For what reasons may the Director choose to terminate my final RAP, or deny my renewal application? (§ 270.185)

~~**How and when will my RAP expire or be terminated? (§ 270.92)**~~

~~New section 270.92(a) requires that the Director specify in the RAP the procedures for RAP expiration and termination. This was proposed at § 269.45. This is the same approach EPA required s in today's rule for modifications, revocations and reissuance, and for the same purpose -- to allow enough flexibility in procedures to accommodate existing requirements of State and Federal remedial programs, where appropriate. In the same way as for modification or revocation and reissuance, section 270.92(a) specifies that if your RAP has been incorporated into a traditional RCRA permit, then the RAP will expire or be terminated in accordance with according to the applicable permit requirements. This is a conforming change to make this requirements~~

~~consistent with § 270.81(c), which allows RAPs to be incorporated into traditional RCRA permits.~~

~~In addition,~~ Unlike in the proposed rule, the Agency has decided to retain the requirements in § 270.43~~'s~~ for causes for permit termination. Thus in new section ~~270.92(b)~~ 270.185, EPA ~~adds~~ cites the three reasons from § 270.175 why RAPs may be terminated. They are that:

(1) the facility owner/operator violates the RAP;

(2) the facility owner/operator did not fully disclose or misrepresented information during the application process; or

(3) the activity authorized by the RAP endangers human health or the environment, and can only be remedied by termination.

The Agency believes it is appropriate to retain these requirements for RAPs because they specify the basis ~~that~~ of what EPA believes should ~~always~~ be potential grounds for termination, while providing assurances of certainty to the facility owner/operator by limiting the reasons the Director may terminate the RAP. The proposed rule did not specify detailed reasons for why RAPs could be terminated, but simply left that up to the Director to specify in the RAP.

Y. ~~Can~~ May the ~~Regional Administrator's~~ decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed? (§ ~~270.93~~ 270.190)

Section ~~270.93(a)~~ 270.190(a) states that any commenter on the modification, revocation and reissuance or termination, or any participant in any hearings on these actions, may appeal the ~~Regional Administrator's~~ decision to modify, revoke and reissue or terminate a RAP to the Environmental Appeals Board, using the same procedures as those used for appealing the original

RAP decision in § ~~270.89~~ 270.155. Appeals of approvals of modifications, revocation and reissuances, and terminations of traditional RCRA permits follow the same process as appeals of original permit decisions. EPA has decided that it will be easiest to understand if RAPs follow the same construct as traditional RCRA permits ~~in this area~~. Also, modifications of RAPs could possibly include significant changes in the remediation waste management activities at the remediation waste management site, and so the right to appeal ~~such~~ these decisions is important to the facility owner/operator and to the community.

Section ~~270.93(b)~~ 270.190(b) specifies that denials of requests for RAP modification, revocation and reissuance or termination may be informally appealed, and § ~~270.93(c)~~ 270.190(c) sets out the procedures for informal appeals which are that: (1) the person appealing the decision must send a letter to the Environmental Appeals Board; (2) the Board has 60 days to act; and (3) if the Board does not take action within 60 days, the appeal ~~shall~~ will be considered denied.

In the May 19, 1980 final rule which created the § 124.5 requirements for informal appeals, EPA explained the Agency's rationale in this way: "EPA rejected comments urging that modification denials be appealable through the same agency procedures as permit issuance or denial. Departures from the cycle of permit issuance and periodic examination should not be encouraged in such a manner. If encouraged, they could keep many permits in a state of perpetual reexamination thus impeding the control program being implemented." EPA has chosen to apply the same process for RAP modification, revocation and reissuance and termination denials as applies to the same decisions for traditional RCRA permits. This process for informal appeals is the same as the process for informal appeals of denials of requests for permit modification, revocation and reissuance and termination in § 124.5(b), except that it has been re-

written to be more readable. EPA sees no reason why the processes should differ.

Section ~~270.93(d)~~ 270.190(d) states that this appeal is a prerequisite to judicial review of these actions. This same requirement~~s~~ applies to traditional RCRA permits under §§ 124.19(e) and 124.5(b).

Of course, because the proposal did not allow for appeal of RAPs, it also did not allow for appeal of RAP modification, revocation and reissuance, or termination. However, the Agency has provided these provisions in response to commenters' requests, as more fully discussed in the preamble section for § 270.~~89~~ 155 entitled "May the decision to approve or deny my RAP application be administratively appealed?"

~~This requirement, like § 270.89 and § 270.95 are not applicable to required elements for State programs. See the discussion under § 270.89 for the reasons for this.~~

Z. When will my RAP expire? (270.195)

As with all RCRA permits, section ~~270.92(c)~~ 270.195 requires (as proposed at § 269.45) that RAPs have a maximum life of 10 years, and that RAPs that permit land disposal units be reviewed every five years. This requirement is a statutory requirement under RCRA section 3005(c)(3). Of course, in many cases, remedies will be short-term; in those cases, the RAP would specify a shorter term than the 10-year maximum. The Agency did not receive any adverse comment on this requirement.

AA. How may I renew my RAP if it is expiring? (§ 270.200)

Like the rule for traditional RCRA permits (see § 270.10(a)), today's rule provides that the procedures for ~~renewal of~~ renewing RAPs (new § ~~270.92(d)~~ 270.200) are the same as the procedures for issuing RAPs. The proposed rule's silence on this issue was an oversight.

BB. What happens if I have applied correctly for a RAP renewal, but have not received approval by the time my old RAP expires? (§ 270.205)

The same as ~~Like~~ § 270.51 provides for traditional RCRA permits, new section 270.92(e) provides assurances to the facility owner/operator by stating that an expiring RAP remains in effect until a new RAP is effective, ~~so~~ as long as a timely application has been submitted and, through no fault of the facility owner/operator, the Director has not issued an effective RAP before the previous RAP expires. This will ensure that remediation waste management will not be interrupted because the Director was unable to renew the RAP before the previous RAP expired. Again, EPA did not specify requirements in the proposed rule for this situation, but is expressly including ~~such~~ these requirements in today's rule to ensure effective implementation.

~~Proposed § 269.45 included revocation provisions with expiration and termination provisions. In today's final rule, EPA has included revocation and reissuance provisions with modifications s in § 270.91, instead of with termination and expiration in § 270.92. The requirements for both proposed sections were the same, and stated that the Director would specify procedures for these actions. EPA has decided to move the discussion of revocation and reissuance in the final rule to the section with modifications because that is how they are grouped for traditional RCRA permits. The Agency believes that it will be easier for the regulated community and regulators to understand the RAPs regulations if they are structured in similar ways to the traditional RCRA permit regulations.~~

Operating under your RAP

CC. What records must I maintain concerning my RAP? (§ ~~270.94~~ 270.210)

As discussed above, the administrative record for RAPs must be kept by the Director

under §§ ~~270.84~~ 270.140 and ~~270.87~~ 270.150. Under new § ~~270.94~~ 270.210, however, the facility owner or operator is required to keep records of all data used to complete the RAP application and any supplemental information that is submitted for ~~a period of~~ at least 3 years from the date the application is signed, and any operating and/or other records the Director requires the facility owner/operator to maintain as a condition of the RAP.

This language is included ~~as a reminder~~ to remind the facility owner/operator that recordkeeping and reporting requirements may be imposed under the Director's authority to impose "terms and conditions necessary to ensure that ~~operation in accordance with the of [a]~~ the operating requirements specified in your RAP ~~will ensure compliance~~ comply" with applicable requirements (§ ~~270.85(a)~~ 270.135). Although the Agency proposed that all recordkeeping and reporting requirements would be set on a site-specific basis (see 61 FR 18817), the Agency is including these requirements in today's rule ~~because EPA believes that it is important to ensure a minimum, consistent level of recordkeeping, and~~ to avoid unnecessary disputes each time a RAP is issued. In addition, the facility owner/operator must comply with ~~applicable~~ recordkeeping requirements from the applicable Part 264 requirements.

The requirements in new § ~~270.94~~ 270.210 are the same as those for traditional RCRA permits required under § 270.10(i), except that they have been reworded to be more readable. In the May 19, 1980 notice where EPA first promulgated the § 270.10(i) requirements, EPA justified the requirement saying that "[t]he recordkeeping requirements are necessary to support any subsequent EPA enforcement action for false reporting" (45 FR 33300 (May 19, 1980)).

Several commenters supported EPA's proposal to allow the Director to set all recordkeeping and reporting requirements site-specifically in the RAP. However, two

commenters requested that EPA require the owner/operator to maintain certain records ~~to be maintained~~ in all cases. One requested that EPA require the facility owner/operator to maintain records about waste that is shipped off-site for management to provide EPA the ability to track the waste ~~in the event~~ if a non-hazardous determination was found to be inappropriate. Another commenter suggested ~~that~~ requiring the facility owner/operator ~~be required~~ to maintain a copy of the RAP, testing results, and manifests and/or bills-of-lading for wastes moved off-site.

All of these comments were based on the premise that EPA was allowing some contaminated media to be exempted from Subtitle C requirements. However, in today's rule, all hazardous remediation wastes remain subject to Subtitle C, including the requirements for manifests, which should alleviate the concerns of the two commenters who recommended requiring manifests. Also, all hazardous remediation wastes remain subject to the applicable requirements of Part 264, some of which require the facility owner/operator to maintain certain records.

In addition to those requirements, EPA decided it was appropriate to require the same recordkeeping requirements for RAPs as ~~there~~ are required for traditional RCRA permits under § 270.10(i). These provisions require the facility owner/ operator to maintain records of data used to prepare the RAP application and supporting documents. EPA believes that these requirements sufficiently respond to the concerns raised by the two commenters.

DD. How are time periods in the requirements of this Subpart and my RAP computed? (§ ~~270.95~~ 270.215)

Although the proposal did not discuss this issue, ~~in order~~ to avoid unnecessary disputes

over the computation of time, EPA has decided to add new § ~~270.95~~ 270.215, which ~~retains~~ keeps the provision at § 124.20 ~~which clarifies~~ clarifying how time periods specified in the permitting rules will be computed. Specifically, section ~~270.95(a)~~ 270.215(a) specifies that any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. Section ~~270.95~~ 270.215(b) specifies that any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. Section ~~270.95~~ 270.215(c) specifies that if the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day. Finally, section ~~270.95~~ 270.215(d) specifies that whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed term. The regulatory language includes examples to make these requirements easier to understand.

~~This requirement, like § 270.89 and § 270.93 are not applicable to does not apply to State programs. See the discussion under § 270.89 entitled "Can the Regional Administrator's decision to approve or deny my RAP application be administratively appealed?" for the reasons for this.~~

EE. How may I transfer my RAP to a new owner or operator? (§ 270.220)

~~Finally,~~ The Agency has ~~also~~ decided to apply the same requirements to RAPs (under new § ~~270.91(e)~~ 220) that § 270.40 requires for traditional RCRA permits. This requires that if the ownership or operational control of the facility changes, the RAP must be modified or revoked and reissued to reflect this change. Again, although this was not proposed, the Agency added it to ensure that the appropriate person is responsible for activities permitted under the RAP.

~~It is important to~~ Note, however, that a change in facility ownership or operational control

should not be considered a "significant" change; the regulations for traditional RCRA permits in § 270.40 allow a change in facility ownership to be made as a Class 1 modification to a permit, which is not a significant change.

Like § 270.40, new section ~~270.91(d)~~ 270.220 requires the new facility owner or operator to submit a revised RAP application no later than 90 days ~~prior to~~ before the scheduled change, and requires a written agreement for the date for transfer of RAP responsibility, and includes requirements for Part 264 Subpart H Financial requirements. The requirement to submit the revised RAP application to the Director 90 days before the change allows adequate time ~~for~~ to revise the RAP ~~to be revised~~ before the change occurs, makes clear when facility ownership or operational control is transferred, and ensures that a responsible person will be fulfilling the Part 264 Subpart H financial responsibility requirements for the facility at all times. These requirements in new § ~~270.91(d)~~ 270.220 are identical to the requirements in § 270.40, except that they have been rewritten to be more readable and to use the words "RAP" and "remediation waste management site" instead of "permit" and "facility."

FF. What must the State or EPA Region report about non-compliance with RAPs? (§ ~~270.96~~ 270.225)

Section ~~270.96~~ 270.225 requires the State or EPA Region implementing RAPs to report to the EPA Regional Administrator or to EPA headquarters, respectively, on noncompliance with RAPs ~~in accordance with~~ according to § 270.5. ~~Although~~ The proposed rule did not explicitly include this ~~existing~~ permitting requirement, which is currently imposed for traditional RCRA permits. However, without soliciting comment on this issue more explicitly, EPA is reluctant to

eliminate this ~~sees no reason not to impose the same~~ requirement for RAPs~~, which are in fact hazardous waste permits, under today's rule~~.

Obtaining a RAP for an off-site location

GG. May I perform remediation waste management activities under a RAP at a location removed from the area where the remediation wastes originated? (§ ~~270.97~~ 270.230)

New § 270.80(a) states that a RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated and areas in close proximity to the contaminated area, except as allowed in limited circumstances under this section. This limitation was originally included in the definition of remediation waste management site in the proposal for today's rule. ~~, and in today's final rule, is limited to areas of contamination and areas in close proximity.~~ Many commenters addressed this limitation in their comments. One commenter argued that ~~management of~~ managing remediation waste away from the area of contamination might be the most environmentally protective option in some cases. For example, permafrost in many areas in Alaska means that surface water is abundant and floodplains are extensive, so if the area of contamination were in ~~such~~ these areas, it would be more environmentally protective to ~~perform treatment, storage or disposal~~ treat, store, or dispose the remediation waste at a more suitable, possibly remote, location. Other commenters suggested that it would be environmentally beneficial to locate remediation waste management sites away from the area of contamination if the contaminated area ~~was~~ were located in a potable well field or over a sole-source aquifer.

One commenter raised the point that "pipelines and other industries that operate facilities on extensive linear rights-of-way frequently must deal with historical contamination of soils at

multiple, noncontiguous locations, many of which may be extremely remote. In these instances, it is most cost-effective to establish a centralized remediation site, rather than to carry out remedial treatment at each site of original deposition. This allows the remedial treatment to be carried out at a location selected for characteristics to minimize exposure to sensitive environments and to resident human populations."

Other commenters pointed out that some large facilities may limit public access, and that plant services and equipment, such as waste water treatment plants and paved areas for staging may be far away from the contaminated areas. These commenters suggested ~~that~~ expanding the definition ~~be expanded~~ to include, if necessary, the entire facility boundary (~~i.e.~~that is, areas under common ownership) to allow the use of an area ~~which~~ that may be several miles away, but better suited or safer for remedial functions, yet contained within the perimeter of the facility's security fence.

Another commenter raised the point that contaminated areas are often located in areas of a site remote from utilities such as electricity, steam, roadways, etc., and that it would be reasonable to allow these remediation wastes to be managed in other areas of the site where these utilities were available. Finally, the Department of Energy (DOE) commented that there are locations where space is limited, and the remediation site needs to be expanded to a location that is removed from general employee access, and that at large sites with multiple areas of contamination, it might be most efficient to consolidate those wastes into one centralized management area within the boundaries of the facility.

The Agency proposed to limit media remediation sites to the "area of contamination" and "areas in close proximity" ~~in order~~ to ensure adequate oversight of the waste management

activities, to ensure that the process was streamlined, and to reduce administrative complications. Many commenters considered ~~our~~ EPA's concerns and also added additional potential concerns that locations away from the area of contamination might become contaminated in the course of waste management, that surrounding communities ~~maybe impacted by the such~~ might be affected by this waste management, and that these ~~actions may~~ might be long-term actions which ~~may~~ might not be desirable to the surrounding community.

However, commenters also suggested solutions ~~to these concerns~~. Commenters suggested that the Agency set up a preference for locating remediation waste management sites ~~to be located~~ in the area of contamination or areas in close proximity, unless good justification could be made why other locations would be preferable. In light of concerns about control over the boundaries of a remediation waste management site, and community involvement, commenters suggested that the RAP approval process would provide the Director the opportunity to approve or deny the designation of the boundaries of the remediation waste management site, would allow the surrounding community to participate in the decisions for activities that might affect them, and would provide the oversight to ensure ~~that~~ proper waste management ~~would take place~~.

EPA agrees that in some cases, such as the commenters have raised, it may be preferable to designate ~~alternate~~ alternative locations for remediation waste management, and has added the special requirements under § ~~270.97~~ 270.230 for performing remediation waste management activities at a location removed from the area where the remediation wastes originated, ~~in order~~ to respond to these comments. Section ~~270.97~~ 270.230(a) and (b) allow the facility owner/operator to request and the Director approve a RAP for an ~~alternate~~ alternative location if performing the remediation waste management activities at such a location will be more protective than managing

the remediation in the area of contamination or areas in close proximity. Section § ~~270.97~~ 270.230(c) specifies that a RAP for an ~~alternate~~ alternative location will be approved or denied according to the procedures and requirements for RAPs in this Subpart.

EPA expressed concern about the possibility of contaminated areas being located in floodplains in the proposal, and was persuaded by the other examples provided by commenters such as permafrost areas, potable well fields, and sole source aquifers. EPA agrees that it would not be environmentally desirable to designate remediation wastes management sites in ~~such~~ these locations. EPA agrees that centralized treatment, in the types of situations described by the commenters, may be environmentally beneficial. The Agency does not want to inhibit the remediation of contaminated properties.

The Agency has set specific requirements in § ~~270.97~~ 270.230(d) for RAPs at ~~alternate~~ alternative locations. First, EPA has specified in § ~~270.97~~ 270.230(d)(1) that the RAP for the ~~alternate~~ alternative location ~~may only~~ must be issued to the person responsible for the cleanup from which the remediation wastes originated. EPA wants to encourage environmentally beneficial cleanups, but does not want to allow a commercial remediation waste management facility to open as an "~~alternate~~ alternative location" which is owned and operated exclusively by someone who is not involved in the cleanup activities, and then be exempt from facility-wide corrective action requirements. Therefore this limitation ensures that ~~only~~ the facility owner or operator performing the cleanup activities ~~can use this remote location~~ be a permittee at the remote location, as either the operator or the owner, or both. Of course, others can also be permittees (for example, the land owner, if not the same as the person performing the cleanup). For example, in the situation discussed above where it may be more protective to remove

remediation wastes for management outside of a floodplain in Alaska, the remote location may be owned by someone other than the person responsible for the cleanup, such as the Federal government. In that case, the person responsible for the cleanup and the Federal agency responsible for the land would be the permittees for the remote location.

Sections § ~~270.97~~ 270.230(d)(2) and (3) require that RAPs for ~~alternate~~ alternative locations are subject to the expanded public participation requirements in §§ 124.31, 124.32, and 124.33, and the public notice requirements in § 124.10(c). EPA has required this additional public participation for these ~~alternate~~ alternative locations ~~in order~~ to give the community surrounding the ~~alternate~~ alternative location ample opportunity to participate in the decisions ~~regarding~~ about managing remediation waste ~~management~~ in their community.

Remediation waste management sites located in contaminated areas will presumably be subject to extensive public participation as part of the remedy selection process, and also the community will be receiving the benefit that a contaminated area in their community will be cleaned up. In ~~alternate~~ alternative locations, the community would not be involved in the ~~remedy selection~~ process of selecting the remedy for the contaminated area, nor would they be receiving the benefit of their community being cleaned up. Therefore, EPA felt it was important to require this additional public participation ~~for these communities~~.

Section ~~270.97~~ 270.230(d)(4) requires these alternative locations to comply with the location standards of § 264.18. Remediation waste management sites located in areas of contamination cannot choose their location. The area of contamination is already established, and therefore it does not make sense to require ~~such~~ these remediation waste management sites to comply with the seismic location standard. However, owners and operators of these ~~alternate~~

alternative locations can choose the location and so should comply with this standard.

Finally, § ~~270.97~~ 270.230(e) specifies that these ~~alternate~~ alternative locations are remediation waste management sites, and retain the benefits of remediation waste management sites, ~~i.e.~~ that is, the exclusion from facility-wide corrective action, and the application of the performance standards in § 264.1(j) ~~in lieu~~ instead of Part 264 Subparts B, C, and D. EPA believes that the disincentives to cleanup would remain if EPA required facility-wide corrective action for these ~~alternate~~ alternative locations, and so is keeping this exclusion the same as it applies to other remediation waste management sites ~~in order~~ to eliminate disincentives to cleanup. Also, the same reasons why the § 264.1(j) performance standards are more appropriate for remediation waste management sites than Part 264 Subparts B, C, and D ~~apply~~ also apply to why § 264.1(j) is more appropriate for these ~~alternate~~ alternative locations than Part 264 Subparts B, C, and D.

EPA believes that the requirements for the Director to approve the designation of the remediation waste management site in the RAP or other permit will ~~provide assurance~~ assure that the location will be decided ~~with~~ for the best environmental reasons ~~in mind~~. Also, the RAP or other permit approval process for designating the remediation waste management site will ensure that the public has the opportunity to comment on the decisions of where to locate the remediation waste management site.

Finally, the Agency wishes to make it clear that if an owner/operator manages hazardous remediation wastes as part of cleanup on their facility, and ships that waste off-site, then, of course, they become a generator. Therefore, when they ship the waste off their facility, including shipping it to a facility under an off-site RAP under §270.230, they must comply with the

applicable requirements for generators, such as manifesting and transportation requirements.

If an owner/operator will be treating, storing, or disposing both on-site and off-site (in a way that triggers the requirement for a permit in § 270.1), the owner/operator must get a separate RAP (or a traditional RCRA permit) for both the on-site and the off-site activities. Only the off-site RAP, however, is subject to § 270.230.

HH. Comparison of the RAPs process to that for traditional RCRA permits

The procedures for ~~approval of~~ approving RAPs in ~~§§ 270.83~~ ~~270.82~~ - 270.97 in ~~of~~ today's rule are more streamlined than the requirements for traditional RCRA permits. EPA expects that RAPs will most often be developed concurrently with the cleanup's remedy selection process. Most cleanup programs contain a remedy selection process requiring the Director's approval and public participation. (As discussed in the State authorization section of this preamble, a program without the required RAP public participation provisions will not be authorized to implement today's rule.)

As described elsewhere in today's preamble, EPA has intentionally constructed the RAP requirements to allow enough flexibility ~~to allow them to be integrated~~ to integrate them with remedy selection requirements. EPA expects remedy selection and RAP approval will most often ~~to~~ occur together, and therefore has designed the RAPs process to allow this. EPA ~~and~~ expects joint issuance of RAPs and remedy selection documents that will be significantly more streamlined than separate permitting and remedy selection processes ~~while maintaining~~ and will still maintain meaningful public involvement.

In addition to general streamlining, there are eight specific steps in the traditional

permitting process that EPA has eliminated for RAPs.

- First, and perhaps most significantly, in an effort to better tailor the RAPs requirements to the cleanup setting, the content requirements for RAP applications (from § ~~270.82~~ 270.110) are significantly less than ~~are~~ those required in a RCRA Part B permit application.
- Second, section 124.3(c) requires a "completeness check" for traditional permits, which EPA does not require for RAPs. Instead, for RAPs, new § ~~270.83~~ 270.130 describes the finding that the Director will make ~~in order~~ to determine whether to tentatively approve or deny a RAP application. Obviously, if the Director feels that a RAP application is incomplete, the Director ~~would~~ will communicate with the RAP applicant to fill in any gaps, but it is not a specific additional step in the process.
- Third, EPA has removed the facility mailing list (section 124.10(c)(1)(ix)) requirements; and
- Fourth, has reduced the Director's public notice requirements under § 124.10(c)(1). (For RAPs, the Director must send notices to local and State agencies as required under RCRA 7004(b), and to the RAP applicant.)
- Fifth, EPA is not requiring a pre-application public meeting and notices (section 124.31); nor
- Sixth, public notice at the application stage (section 124.32); nor
- Seventh, the requirements for an information repository (section 124.33) at remediation waste management sites, but encourages the Director and the RAP

applicant to conduct ~~such~~ these activities where appropriate.

- Eighth and finally, the procedural requirements for modification and termination, revocation and reissuance are much more flexible for RAPs than for traditional RCRA permits. Today's rule allows the Director to specify ~~such~~ these requirements site-specifically in the RAP, instead of the EPA-promulgated requirements such as in sections 270.41, 270.42, and 270.43. EPA expects that many States will have established procedures in their remedial programs for modifying, terminating and revoking and reissuing RAPs. EPA is allowing for any ~~such~~ of these State requirements ~~so~~ as long as they meet the threshold requirements of including an opportunity for public participation whenever significant modifications are made (see section ~~270.91~~ 270.170)[13].

V. Requirements under Part 264 for remediation waste management sites (§ 264.1(j))

In the proposed rule at § 269.40(b), EPA proposed that media remediation sites (finalized in today's rule as remediation waste management sites) would be subject to the applicable provisions of Part 264 except Subparts B (General Facility Standards) and C (Preparedness and Prevention). Subparts A and D - DD would continue to apply unchanged, at least for wastes above the Bright Line. EPA proposed this approach, as one option, because the unit specific standards of Part 264 provided ready-made standards ~~ensuring~~ to ensure protection of human

[13] Note that by complying with the public participation requirements for RAPs, ~~an~~ a facility owner/operator may not have automatically fulfilled all applicable public participation requirements for corrective action, closure/post-closure, or any other cleanup-related activities that require public participation and the facility owner/operator needs to remain cognizant of these separate public participation requirements.

health and the environment. However, EPA recognized that Part 264 standards other than those in Subparts B and C also may not be appropriate and solicited comment on ~~what~~ which, if any, other provisions of Part 264 should not ~~be applicable~~ apply to media remediation sites (61 FR 18814). EPA also requested comment on the "Unitary Approach" that would remove all Part 264 standards for remediation wastes.

After examining public comments on this part of the proposal, EPA has decided to finalize a somewhat different approach from what was proposed. Specifically, today's rule at § 264.1(j) provides that ~~all~~ remediation waste management sites must comply with all parts of Part 264 except Subparts B, C, D (Contingency Plan and Emergency Procedures), and § 264.101.[14] In place of the requirements in Subparts B, C, and D, however, EPA is finalizing performance standards ~~that are~~ based on the general requirement goals ~~contained~~ in these sections.[15] These new standards eliminate the specific requirements of Subparts B, C, and D, which for two reasons can be inappropriate for ~~cleanup-only sites~~ remediation-only sites~~, for two reasons~~. Either they~~~~ requirements were not specifically designed for the~~ ~~often short-term nature of~~ treatment, storage, and disposal activities during cleanups, or they are likely to duplicate or conflict with requirements imposed under the remedial authority compelling cleanup.

Thus, the provisions finalized today ensure that the concerns addressed by these provisions will be addressed by the Director in the permit or RAP, without requiring specific conditions that may be inappropriate. At the same time, EPA has chosen not to amend the unit-

[14] Note that § 264.1080(b)(5) already includes an exemption from Subpart CC for certain wastes that are generated as the result of implementing remedial activities.

[15] Of course, facilities other than remediation-only facilities must comply with Subparts B, C, and D.

specific standards of Part 264 for remediation waste, although ~~it~~ the Agency continues to believe a more extensive revision of these requirements is appropriate ~~in the long term~~. The applicability of § 264.101 is discussed in section VII. of this preamble.

A. Comments on applying Part 264 standards to remediation waste management sites

Many commenters, arguing for the Unitary Approach, suggested that Part 264 standards should not apply to remediation waste management, and that regulatory Agencies overseeing cleanup should have broad flexibility in imposing conditions on specific units.

Other commenters suggested more narrowly that several of the specific Part 264 management provisions ~~that were~~ included in the HWIR-media proposal are unnecessary for ~~the management of~~ managing remediation wastes under a RAP. ~~These~~ The earlier commenters argued that these requirements were clearly intended for the long-term management of hazardous waste at facilities ~~that~~ which manage these materials on an on-going basis, whereas many cleanups are short-term and do not lend themselves to these restrictive provisions. These commenters argued that more flexibility is necessary to allow cleanups to take place ~~in a timely manner~~ quickly and to proceed unencumbered by regulatory provisions more ~~applicable to~~ appropriate for the risks posed by ~~the management of~~ managing hazardous "as-generated" process wastes.

Specifically, several commenters suggested that the Agency should allow the Director to waive specific requirements from Part 264 or make site-specific ~~requirements~~ adjustments under appropriate site-specific circumstances.

Part 264 Subpart E

~~For example,~~ Commenters specifically mentioned Part 264 Subpart E requirements for manifesting, and commented that ~~such~~ these requirements should not apply to wastes managed

on-site. One commenter stated that manifesting requirements were ~~inappropriate~~ not appropriate for all corrective action activities and that specific manifesting requirements should be set out in the RAP for that site. EPA disagrees; the Agency believes that manifesting is no less important when hazardous wastes are being transported off-site in the remedial context than ~~it is~~ in the as-generated waste context, and so ~~such~~ these requirements continue to apply to hazardous remediation wastes. However, manifests are not required when wastes are managed on-site.

Part 264 Subpart F

Another commenter stated that Subpart F sections 264.90 - 264.100 groundwater monitoring and corrective action requirements should not apply to remediation waste units, because that would lead to a perpetual cycle of waste management activities. This commenter, in EPA's view, has raised a complex and important issue. EPA believes that, where a new land based unit is created as part of corrective action, it should be handled as a landfill -- subject to Subpart F groundwater requirements (including Subpart F section 264.100 corrective action) -- or as a CAMU, under which ~~(allowing~~ EPA ~~to~~ establishes alternative site-specific conditions to protect groundwater~~)~~.

On the other hand, where an old regulated unit has released hazardous constituents into the environment, and ~~it~~ releases from the unit are ~~is~~ being addressed as part of a cleanup, EPA believes that Subpart F requirements ~~often~~ do not make sense (since these requirements were designed primarily as prevent~~at~~ive standards for units that had not yet had releases into the environment); instead, remedial authorities like CERCLA or RCRA 3004(u) are better suited for defining groundwater monitoring and cleanup requirements at these units.

EPA's post-closure rule, which will be issued shortly **[or was recently issued --**

depending on timing -- if issued -- insert cite here], is designed to allow ~~interpretation~~ integration of cleanup requirements at closing regulated units into broader cleanup requirements at specific sites, and may address the commenters' concerns. ~~Similarly,~~ Areas of contamination ~~-- even when subject to remediation --~~, which are not typically "regulated units" subject to Subpart F or unit-specific RCRA requirements would be handled in a similar fashion. ~~Thus,~~ The regulatory agency facing an area of contamination would base specific decisions on groundwater monitoring, cleanup levels, and cover requirements on the remedial authorities being invoked, rather than on RCRA Subpart F or other unit-specific requirements.

~~Thus,~~ In summary, where a new land-based unit is created, EPA disagrees with the commenter; in this case, current Part 264 standards (including the CAMU) should continue to apply. But where an old or existing unit is being addressed as part of a cleanup, EPA shares the commenter's concerns. EPA believes that considerable flexibility already exists in the RCRA regulations to address this situation, but ~~it~~ the Agency also acknowledges that further ~~work (~~ evaluation (including possible statutory changes) is appropriate ~~in this area~~.

Part 264 Subpart G

Another commenter stated that Subpart G closure requirements could be incorporated into the RAP, and therefore a separate closure plan or permit would be redundant. EPA agrees with this commenter, and throughout the RAPs section of today's preamble stresses the importance of integrating processes and documents whenever possible and helpful. EPA agrees that, if closure requirements can be integrated into the RAP, ~~and follow the applicable procedures,~~ then two separate documents will not be necessary.

At the same time, today's ~~In this~~ rule, ~~EPA is not altering~~ does not alter the way that Subpart G ~~applies~~ or unit specific closure requirements apply to cleanup sites. Subpart G and unit specific closure requirements apply ~~applies~~ to new units permitted under a RAP, but not to areas of contamination, or to old units not already subject to Subtitle C (for example, units where non-hazardous wastes that subsequently became hazardous were disposed). This is how ~~Subpart G applies~~ closure requirements apply at any other regulated facility. Thus, if a new landfill were created under a RAP in the course of a remediation, it would be subject to Subpart G closure standards. ~~Alternatively~~ Or, the Director might approve a CAMU, which would provide greater flexibility than the landfill closure standards.

~~Subtitle C~~ Subpart G or unit-specific closure standards ~~would~~ will not apply in areas of contamination where new "placement" of hazardous wastes has not occurred.[16] ~~or at units with historical contamination but at which there is no active management of hazardous waste (unless they were already regulated units subject to Subtitle C).~~ Closure, and monitoring, at these units or areas ~~would~~ will be a remedial issue, to be addressed under the remedial authority under which the cleanup is being performed.

Part 264 Subpart H

Several commenters ~~commented~~ focused on Part 264 Subpart H financial assurance. They suggested that financial assurance for corrective action has a very different purpose from ~~what it~~ the propose it has for operating facilities. Also, they suggested that sites should be allowed to set

[16] For a description of what constitutes "placement" in an area of contamination, see the March 13, 1996 memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, regarding "Use of the Area of Contamination (AOC) Concept During RCRA Cleanups."

up site-specific plans for financial assurance, depending on the specifics of the site and the activities taking place.

Today's rule, however, does not address financial assurance for corrective action requirements, such as the ability to finance a cleanup and meet remedy goals. It does not impose any additional requirements for financial assurance for corrective action, beyond what a facility may already be subject to under other authorities. Thus, at a remediation-only site, today's rule would impose no financial assurance for corrective action. However, if the site is located at a facility subject to corrective action, then the financial assurance requirements for the corrective action activities will still apply to the full extent provided by this Subpart (~~i.e.~~ that is, on a facility-wide basis). That is, designation as a remediation waste management site does not eliminate otherwise applicable financial assurance requirements.

At the same time, however, EPA has chosen to retain the unit-specific financial assurance requirements for third-party liability and closure. EPA recognizes that the very detailed nature of the Agency's current requirements in these areas may constrain some State programs, and that in some cases it may be better for the environment if marginal facility owners are allowed (or required) to proceed with cleanup, even if they cannot secure financial assurance mechanisms. (In this case, an enforcement mechanism may be preferable to a permit mechanism.) EPA, however, did not solicit, or receive, sufficient comment in this area to change the current requirements. Thus, remediation units permitted under a RAP ~~would~~ will remain subject to the unit-specific RCRA financial assurance requirements for third-party liability and closure.

Part 264 Subparts I, J, K, L, M, N, and O

One commenter suggested that the requirements of 40 CFR Part 264 Subparts I, J, K, L,

M, N, and O be specifically incorporated into RAPs only as necessary. ~~According to the commenter, these requirements are only necessary if the RAP covers the type of unit specified in these subsections.~~ The commenter suggests that they might not be necessary for managing low-risk media. However, EPA is not finalizing the Bright Line which would have distinguished between high- and low-risk media. EPA agrees that these requirements only need to be incorporated into the RAP if they ~~are applicable~~ apply to units being permitted under the RAP.

Part 264 Subpart BB

Finally, one commenter suggested ~~that~~ dividing Subpart BB ~~be divided~~ into three tiers:

1) Subpart BB would not apply to actions that would take place for a shorter time than one year;

2) the Director would apply Subpart BB, as appropriate, to actions that would take between one and three years; and

3) Subpart BB would apply in its entirety for actions taking longer than three years.

Again, EPA has chosen not to amend the unit specific standards of Part 264 for remediation waste, although ~~it~~ the Agency continues to believe a more extensive revision of these requirements is appropriate ~~in the long term~~.

EPA believes that it will be extremely rare for the Part 264 Subpart BB requirements to apply to units managing remediation waste. The Subpart BB requirements only apply to units managing wastes with organic concentrations of at least 10 percent by weight. EPA believes that concentrations at that high a level are rarely found in remediation wastes. Also, if the Director determines that the Subpart BB requirements do apply, but are not appropriate for a particular cleanup site, the Director can designate the unit as a temporary unit. That allows the Director to modify the unit-specific standards as appropriate in cleanup situations. However, temporary units

may only be used for a limited period of time.

B. EPA's response to these comments

The Agency agrees with the many commenters who pointed out that more flexibility is desirable for many cleanups, but does not believe at this point that a blanket exemption from Part 264 is appropriate. In the first place, certain requirements (~~e.g.~~ for example, ~~minimum technological requirements~~ MTRs for landfills) are imposed by statute, and EPA does not believe ~~it~~ the Agency has the authority to eliminate them in today's rule. In addition, EPA does not believe ~~it~~ the Agency has fully aired the issues for public comment. For example, EPA is not convinced that secondary containment is needed for tanks in all remedial situations. However, EPA did not solicit comment specifically on this issue, and the Agency is not prepared today to finalize amendments to the current regulations.

At the same time, EPA believes that the current regulations already provide significant flexibility in remedial contexts. Secondary containment, for example, is not necessarily required for tanks or other units used in remediation if they were approved as temporary units under § 264.553. Innovative technologies can often be permitted under the flexible standards of Subpart X. As discussed earlier, the CAMU regulations provide flexibility for land-based units, as do staging piles, which are promulgated in today's rule and discussed elsewhere in this preamble.

On the question of air emissions, raised specifically by one commenter, EPA notes that the temporary unit standards allow the Director to develop alternative operating standards for temporary tanks and containers managing remediation waste (which would include alternative standards to Subpart BB; if they applied). And furthermore, EPA has explicitly exempted on-site remedial activities under EPA or State cleanup authorities from Subpart CC standards. Thus,

while EPA believes that further review and tailoring of the current technical permitting standards for remediation waste is appropriate, the Agency also concludes that considerable flexibility already exists.

C. EPA is providing relief from Part 264 Subparts B, C, and D

On the other hand, in today's rule, EPA is amending the general facility standards of Subparts B, C, and D to provide greater flexibility for owner/operators of remediation waste sites. Instead of the current, detailed requirements of these Subparts, persons managing remediation waste sites will be able to meet general performance standards. ~~Finally, the Agency has provided significant flexibility by creating performance standards for remediation waste management sites to meet in lieu of the current Part 264 Subparts B, C, and D.~~ These performance standards define the facility requirement, such as "inspect the facility . . . often enough to identify problems in time to correct them," but allow considerable flexibility to the regulator in determining how an owner/operator will ~~in how to~~ meet those standards. The Agency believes that the basic goals of Subparts B, C, and D continue to be important, but also EPA ~~it~~ believes that the protection desired under Subparts B, C and D can be achieved at remediation waste management sites by applying the performance standards of today's rule.

Flexibility in applying many of these substantive requirements is important because of the wide variety of remediation waste management activities that may be permitted under a RAP, everything from managing small volumes of investigation-derived wastes, to ~~remediation of~~ remediating large volumes of contaminated soils, or ~~to treatment of~~ treating highly concentrated remediation wastes. Also, some activities permitted under RAPs may be very short-term actions, and yet some may ~~be~~ involve multi-year treatment of remediation wastes at a large remediation

waste management site. The following paragraphs describe the flexibility EPA is providing for general RCRA facility standards in § 264.1(j).

The opening ~~two~~ sentences of § 264.1(j) provide for applicability of these provisions ~~in lieu~~ instead of § 264.10.

§ 264.1(j)(1)

~~In lieu~~ Instead of § 264.11, new section 264.1(j)(1) requires the facility owner/operator to obtain an EPA identification number. These identification numbers are important ~~for~~ to allow EPA and States' ~~abilities~~ to track activities at facilities that generate hazardous wastes, whether as a result of ongoing processes or during cleanup. This is a simple procedure and can be done quickly. This standard is only different from § 264.11 entitled "identification number," because of editorial changes to enhance readability.

The requirements of § 264.12 ~~are not applicable~~ do not apply to remediation waste management sites because they are requirements for receiving wastes from foreign (§ 264.12(a)) and off-site (§ 264.12(b)) sources, which will not occur at remediation waste management sites. (Owner/operators are exempt from the § 264.12(b) requirements when they are also the generator. The only way an owner/operator can have a RAP at an off-site location is if they are both the generator and the owner/operator of the off-site location. Therefore, this requirement will never apply to RAPs.)

§ 264.1(j)(2)

~~In lieu~~ Instead of "general waste analysis" (§264.13), today's rule ~~(§ 264.1(j)(2))~~ requires a chemical and physical analysis of the hazardous remediation waste under new § 264.1(j)(2) , which at a minimum must contain all the information ~~which is~~ needed to treat, store, or dispose of

the waste ~~in accordance with~~ according to this Part and Part 268. The waste analysis must be accurate and ~~kept~~ up to date.

This requirement mirrors the existing requirement in § 264.13(a)(1), which sets out the general goal of the waste analysis requirement. However, this standard eliminates requirements that:

(1) were written with facilities engaged in the business of hazardous waste operations in mind (~~e.g.~~ for example, § 264.13(a)(3), which addresses analysis of wastes from unfamiliar off-site sources); or

(2) are likely to duplicate or conflict with requirements imposed by the remedial authority at the site (~~e.g.~~ for example, 264.13(b) to develop an analysis plan that may duplicate testing done for site-characterization and remedy selection).

EPA expects that waste analysis plans developed under a reliable cleanup program, such as EPA's RCRA corrective action program or its CERCLA program, ~~would~~ will ~~be~~ provide ~~sufficient~~ enough data to meet this requirement. EPA emphasizes that waste analysis should ~~an acceptable plan would~~ be tailored to provide information needed ~~for successful management of~~ to manage cleanup wastes successfully. EPA does not encourage analysis for analysis sake.

§ 264.1(j)(3)

~~In lieu~~ Instead of the "security" provision (§264.14), EPA has promulgated a performance standard at § 264.1(j)(3) to warn potential intruders and to minimize the unauthorized entry of persons or livestock onto the active portion of the remediation waste management site. EPA allows an exemption from this requirement if the facility owner or operator can show that ~~such~~ this entry will not injure these persons or livestock or cause

violations of the requirements of part 264.

For traditional RCRA permits, this requirement and the exemption are ~~found~~ at § 264.14(a). However, § 264.14(b) and (c) are very detailed in exactly how to provide that security. EPA has determined that, for remediation waste management sites, the performance standard reasonably provides that the site will be secure, but allows flexibility in achieving that goal. This takes into account the different types of activities that may be taking place at remediation waste management sites.

§ 264.1(j)(4)

~~In lieu~~ Instead of the "general inspection requirements" (§264.15), EPA has promulgated a performance standard at § 264.1(j)(4) requiring facility owner/operators to inspect the facility often enough to identify problems in time to correct them before a problem leads to a human health or environmental hazard. This performance standard, which is the same as the current permitting requirement, also:

- Requires the facility owner/operator to take action immediately if a hazard is imminent or has already occurred;
- ~~This performance standard~~ Is drawn from the language in § 264.15(a) and (c);
- ~~This inspection performance standard~~ Ensures that the facility owner/operator will make appropriate inspections; but
- Allows for flexibility in how these inspections will be done.

EPA is not requiring the other parts of §264.15(b) and (d) regarding a written schedule and log, but instead, new § 264.1(j)(12) and (13) require the facility owner/operator to have a

plan and records. EPA expects this approach will be more streamlined than requiring a separate plan and record for each activity under 264.1(j).

§ 264.1(j)(5)

~~In lieu~~ Instead of the "personnel training" requirements at § 264.16, EPA has promulgated § 264.1(j)(5) requiring the facility owner/operator to ~~provide training to~~ train personnel ~~that teaches them~~ to perform their duties in a way that ensures the facility's compliance with the requirements of this part, and ~~trains them~~ to respond effectively to emergencies. This performance standard is derived from the requirements in § 264.16(a)(1) and (3).

~~Personnel~~ Training is important when personnel are dealing with hazardous substances, not only to ensure proper precaution during normal operations, but also to ensure that well-trained personnel are available ~~to~~ and can respond effectively in ~~such~~ emergencies. This performance standard requires ~~such~~ training, but is flexible enough to cover a wide range of reasonable programs. For example, where a site is subject to Occupational Safety and Health Administration (OSHA) or similar training standards for hazardous waste site workers, additional standards probably ~~would~~ will not be necessary. EPA does not want to create duplicative requirements where ~~adequate~~ training is already adequate ~~required~~.

EPA is not ~~requiring~~ specifying all of the details of how to provide and keep records of training as is required under § 264.16(a)(2), (b), (c), (d), and (e). EPA believes that each site will be very different and require different intensities of training. Also, § 264.1(j)(13) will ensure proper records are maintained.

§ 264.1(j)(6)

~~In lieu~~ Instead of the § 264.17 "general requirements for ignitable, reactive, or

incompatible wastes," EPA has promulgated the performance standard at § 264.1(j)(6). This standard requires facility owners and operators to take precautions when managing ignitable, reactive and incompatible wastes. This performance standard is similar to the § 264.17(a) and (b) requirements.

Because ignitable and reactive wastes can be highly dangerous materials, and because different properties of different hazardous wastes can cause explosions, ~~or~~ toxic fumes, or other hazards if they react with other incompatible materials, it is important to take appropriate precautions when dealing with ~~such~~ these wastes. EPA did not include the specifics of how to separate wastes from potential sources of ignition or reaction or what kinds of reactions to avoid or how to document compliance. EPA believes that, due to the ~~high~~ level of oversight at cleanup sites, these precautions will be adequately addressed, and recordkeeping will be addressed under new § 264.1(j)(13).

Section 264.18(a) does not make sense for remediation waste management sites, as contaminated areas are already located in a certain location, and if the remediation waste management site must be located in the area of contamination or areas in close proximity, there is not much choice about where to locate the remediation waste management site. Therefore, EPA has not included a performance standard for remediation waste management sites ~~in lieu~~ instead of § 264.18(a). However, EPA expects facility owners and operators to do their best to locate units a safe distance from faults whenever possible. EPA has required compliance with this standard under § 270~~.97~~.230(d)(4) when ~~alternate~~ alternative locations are approved for remediation waste management.

§ 264.1(j)(7)

Section 264.1(j)(7) is the same requirement as the provisions of section 264.18(b) for floodplains, but re-written to enhance readability. Section 264.18(b) already provides ~~for~~ some flexibility for locating within a floodplain (provided certain mitigating design or operating criteria are met). Today's performance standard allows the same flexibility.

§ 264.1(j)(8)

Section 264.1(j)(8) is the same requirement as § 264.18(c) for salt dome formations, salt bed formations, underground mines, and caves. This is also a RCRA statutory requirement at RCRA §3004(b), and is the same as that in § 264.18(c), but is re-written to enhance readability. EPA believes that it is ~~inconceivable~~ unlikely that the situation contemplated in this provision would arise during a remediation, but -- because the requirement is statutory -- EPA included it in today's rule.

§ 264.1(j)(9)

Section 264.1(j)(9) requires the facility owner/operator to have a construction quality assurance (CQA) program for all new surface impoundments, waste piles (except staging piles), and landfill units at the remediation waste management site ~~in accordance with~~ according to the requirements of § 264.19. ~~The requirements for construction quality assurance appear to apply equally to remediation waste management units and other hazardous waste units. CQA plans must address such issues as the quality of materials and the condition and manner of their installation. As with any hazardous waste management unit, it is important for a hazardous remediation waste management unit to be well constructed.~~ While this requirement is included under "General Facility Standards," EPA views the requirement as more akin to the unit-specific,

technical standards that appear later in Part 264. Because EPA did not specifically solicit comment on the technical need for these requirements in a remedial context, or the possibility of more flexible alternatives, the Agency is not prepared at this point to revisit them. Therefore, EPA (consistent with the Agency's decision to leave Part 264 unit-specific requirements intact) has simply required compliance with the existing requirements in § 264.19. EPA notes, however, that these requirements do not apply to CAMUs or to already existing areas of contamination where waste is left in place.

§ 264.1(j)(10)

Section 264.1(j)(10) requires that, ~~in lieu~~ instead of Subpart C - Preparedness and Prevention (§§ 264.30 through 264.37) and Subpart D - Contingency Plan and Emergency Procedures (§§ 264.50 through 264.56), the facility owner/operator must have accident preparedness and prevention procedures and a contingency and emergency plan. These plans must: (1) ensure that the hazardous waste units at remediation waste management sites are designed, constructed, maintained, and operated to minimize the possibility of an emergency; and (2) minimize hazards to human health or the environment from any emergencies from ~~the treatment, storage and disposal~~ treating, storing, and disposing of the hazardous remediation waste ~~taking place~~.

The performance standard embodies the requirements in § 264.31 and § 264.51. However, the Part 264 Subparts C and D requirements include considerable detail about preparing for and responding to emergencies. In the cleanup scenario, ~~such~~ this detail can become a problem because of the wide variety of activities taking place. Detailed requirements may be redundant with other cleanup requirements or simply unnecessary in many cases. ~~For example, in~~

~~the case of management of low-hazard contaminated soils, or a short term project, it may not be necessary to familiarize police, fire departments, emergency personnel and hospitals with the detailed layout of the facility and activities.~~ For example, the cleanup program overseeing the remediation may already have procedures for notifying police, fire departments, and emergency personnel. In this case, the specific requirements of Part 264 Subparts C and D would be redundant. ~~Due to~~ Because of the wide variety of activities that may be taking place at a remediation waste management site, and the fact that these activities may often be short-term ~~activities~~, EPA is allowing considerable flexibility in these preparedness requirements.

§ 264.1(j)(11)

New section 264.1(j)(11) requires the facility owner/operator to designate one or more employees as an emergency coordinator. This is the same requirement as under § 264.55. This requirement makes it possible to implement the emergency procedures in the contingency and emergency plan ~~in an efficient and timely manner~~ quickly and efficiently. In any circumstance involving ~~the treatment, storage or disposal~~ treating, storing, or disposing of hazardous wastes, including hazardous remediation wastes, an emergency coordinator facilitates an effective response.

§§ 264.1(j)(12) and (13)

New section 264.1(j)(12) requires the facility owner/operator to have and implement a plan or plans to meet the requirements of subparagraphs (j)(2) through (j)(6) and (j)(9) through (j)(11). Thus, the facility owner/operator must have a plan to address waste analysis, security, inspection, training, waste compatibility, construction quality assurance, and accident preparedness. Also, new § 264.1(j)(13) requires the facility owner/operator to maintain records

documenting compliance with subparagraphs (j)(1) through (j)(12).

In the existing Subparts B, C, and D, each of the individual sections has requirements to have plans and keep records. New §§ 264.1(j)(12) and (13) streamline those requirements by ~~only~~ requiring only one plan and one set of records to cover the requirements instead of several plans and sets of records. Note, however, that the owner/operator is not limited to one plan; more than one plan would be perfectly acceptable if that is more appropriate for the particular site. ~~Such~~ These plans and records are necessary so that the Agency or the public can inspect the facility's compliance ~~of the facility~~ with these requirements. EPA believes that any well-managed remediation project will have plans and records of this type, and the Agency does not anticipate that sites with acceptable plans as part of their remedial activities will have to reformat or rewrite these plans solely to meet the performance standards of today's rule.

It is important to note that, in the same way as the current Part 264 standards apply to facilities, these new standards under § 264.1(j) apply at remediation waste management sites only to hazardous remediation waste management units~~. These requirements do~~ not ~~apply~~ to units that are not otherwise subject to Part 264 requirements, such as solid waste management units, or exempt hazardous waste units.[17]

In the proposed rule, the requirements of Subparts B and C were waived for media remediation sites (which in the final rule are remediation waste management sites) under RAPs. There was no mention that there could possibly be a media remediation site that was not permitted by a RAP. Under the final rule, EPA acknowledges that there may be remediation

[17] Of course, solid waste management units are subject to § 264.101 corrective action requirements at facilities subject to corrective action.

waste management sites that are permitted under a traditional RCRA permit, and so has not specified that the new § 264 requirements for remediation waste management sites are limited to those permitted under RAPs, but are available for all remediation waste management sites.

The arguments for alternative standards still apply, even without the limitation to RAPs. Remediation waste management sites will ~~very~~ vary greatly between the different types of remediation wastes and activities taking place. They will be subject to cleanup requirements under the programs requiring cleanup at these sites, and often cleanup requirements and the traditional § 264 standards may be duplicative ~~or in conflict~~. Therefore, today's rule makes ~~EPA will apply~~ these new § 264 performance standards ~~to~~ available for all remediation waste management sites.

VI. Application of RCRA §§ 3004(u) and (v), and § 264.101 to remediation waste management sites (§ 264.101(d))

EPA ~~also~~ proposed that the 3004(u) and (v) facility-wide corrective action requirement (which is implemented through § 264.101) would generally not apply to facilities that obtain RMPs (see proposed § 269.40(d)). EPA has ~~also~~ included in the final rule in § 264.1(j) ~~a sentence which that states, that "Part 264 Subpart F section~~ that § 264.101 does not apply to remediation waste management sites. However, some remediation waste management sites may be part of a facility that is subject to a traditional RCRA permit because that facility also treats, stores, or disposes of hazardous wastes that are not remediation wastes. The rule does clarify that in these cases, Subparts B, C, and D, and § 264.101 do apply to the facility subject to the traditional RCRA permit. ~~unless they are part of a facility subject to a permit for the treatment, storage or disposal of hazardous wastes that do not constitute hazardous remediation wastes,"~~

~~and~~ EPA also amended § 264.101 to add a paragraph (d) as follows: "(d) This ~~provision~~ section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for ~~the treatment, storage or disposal~~ treating, storing or disposing of hazardous wastes that ~~do not constitute hazardous~~ are not remediation wastes." Subpart F section 264.101 facility-wide corrective action does not apply to remediation waste management sites.[18] This issue is more fully discussed in today's preamble section on the definition of remediation waste management site.

VII. Staging Piles (§§ 260.10 and 264.554)

A. Introduction and background

Today's rulemaking establishes a new type of unit-- the staging pile-- which will provide needed regulatory flexibility for the facilitation of certain cleanup activities, while ensuring environmentally protective results. A staging pile is an ~~non-containerized~~ accumulation of solid, non-flowing remediation waste (as defined today in 40 CFR 260.10) that is not a containment building and is used only during remedial operations for temporary storage at a facility. Today's regulations provide the ~~overseeing agency~~ Director with the authority to designate and approve staging piles for the purpose of storing remediation waste. In today's staging pile ~~rule~~ provisions, EPA has modified the remediation pile concept proposed in the HWIR-media proposal on April 29, 1996 in response to comments and also to correspond with other changes that have been

[18] The exclusion of remediation waste management sites from the definition of facility in today's rule is strictly limited to the definition of facility for purposes of corrective action, which is found in part (2) of the definition of facility. Remediation waste management sites are not excluded from part (1) of the definition of facility for other purposes.

made to the rule since its proposal.

A goal repeated throughout today's final rule is the achievement of environmental progress by facilitating the cleanup of as many contaminated sites as possible. The physical, economic, and technical limitations on the operation of a cleanup program often dictate that remediation wastes be temporarily stored on-site prior to completion of the remedial activity. The regulations establishing staging piles are designed to provide greater flexibility for decision-makers to implement protective, reliable, and cost-effective remedies. Staging piles will allow short-term ~~activities~~ storage to occur under circumstances that are protective of human health and the environment, without the extensive set of prescriptive standards that may be required for units in long-term use.

EPA believes that the additional flexibility provided by staging piles will improve the ability of program implementors and facility owner/operators ~~ability~~ to implement the most effective remedy for any given facility. For example, the use of staging piles will facilitate short-term storage of remediation wastes so that sufficient volumes can be accumulated for shipment to an off-site treatment facility, or for efficient on-site treatment. The Agency also anticipates, for example, that staging piles will facilitate treatment technologies such as chemical extraction by allowing on-site accumulation of sufficient treatment volumes. In addition, staging piles should be useful since they will allow storage of wastes during the conduct of interim measures at a facility, while decisions on the final remedy are being formulated. Longer-term and more complex activities such as land-based treatment and permanent disposal will not be allowed in staging piles. As discussed more fully below, the Agency believes that these activities are more properly conducted in CAMUs (§ 264.552, promulgated on February 16, 1993; 58 FR 8658).

~~In order~~ To facilitate the cleanup of sites contaminated with hazardous waste, the Agency believes that it must remove some of the obstacles to cleanup that exist in the RCRA Subtitle C program. These obstacles stem from the Subtitle C program's structure as primarily a "prevention oriented" program, with requirements that can act as a disincentive to ~~more~~ protective remedies in "response-oriented" programs and can limit the flexibility of decision-makers to choose the most appropriate remedy at a site. Although LDRs and MTRs, established in RCRA Section 3004 (m) and (o) respectively, are ~~generally~~ appropriate to ensure proper ongoing management or permanent disposal of hazardous industrial waste, these sections of the statute often become a barrier to cleanup and overall environmental protection when applied to remediation waste.

Under current regulations, waste piles are considered land disposal units, and all hazardous wastes must therefore be treated to LDR standards before being placed into a waste pile. Large volumes of waste and contaminated media are often encountered during remedial actions and, because LDR and MTR often create a disincentive to exhuming hazardous remediation waste, EPA believes that allowing these wastes to be temporarily stored in on-site piles without meeting LDR and MTR standards will significantly further prompt remediation. Accommodating the need for temporary storage in piles without imposing LDRs and MTRs was also generally supported by the Committee authorized by the Federal Advisory Committee Act (FACA), representing the interests of industry, government and environmental groups, whose recommendations formed the basis for the proposed rule. In addition, the overwhelming majority of commenters that addressed the proposed remediation piles expressed support for a new type of unit that would allow for temporary storage in piles. A number of commenters emphasized that,

even if EPA decided to retain the CAMU regulation, piles would be useful as a reasonable option for storage of materials awaiting transport or on-site treatment. Although many of the commenters also supported treatment in piles (which is not allowed under today's rule), the consensus of commenters was that the ability to operate some kind of temporary pile that would not trigger LDRs or MTRs would be beneficial to the remedial process by promoting efficient cleanups. Not one of the commenters disputed that LDRs and MTRs can be a barrier to increasing the rate and quality of cleanups. It was with the backing of this consensus that today's staging pile regulation was formulated.

Applying LDRs to temporary placement of remediation waste often makes it impractical to store hazardous remediation wastes in a pile pending its ultimate disposition, since ~~such~~ this land placement generally may not occur prior to treatment to LDR standards. This essentially presents the remedial decision maker with three options: ~~(1)~~

- leaving remediation waste in place; ~~(2)~~
- storing it in a tank or container (or temporary unit, when available) prior to further management; or ~~(3)~~
- seeking a CAMU.

Leaving waste in place is often an unsatisfactory solution due to the potential for future risks to public health, an outcome that EPA strives to discourage. Temporary unit or tank and container storage, although sometimes preferable in cases where the volume of waste is not particularly large, may cause delay and add complexity for sites with a large volume of waste, while providing little, if any, additional benefit to human health and the environment. CAMUs are also an option, but they have proved to be administratively complex for relatively short-term

storage. The Agency therefore believes that the temporary storage in staging piles, subject to regulatory imposition of site-specific requirements and oversight, is preferable to the present regime, which encourages the continuing, unmanaged presence of remediation waste for an indefinite period of time.

Staging piles do not replace existing mechanisms that allow remediation waste managers to tailor RCRA requirements to accommodate site-specific circumstances. These include CAMUs, temporary units (§ 264.553), treatability variances, and the AOC policy. Rather, staging piles provide an additional mechanism which may be used for short-term storage when, for example, the AOC policy does not apply and tank, container, or temporary unit storage is not feasible. Below is a comparison chart of the units most applicable to today's rulemaking:

Type of Unit	Unit Structure	Kind of Waste	Time Limit	Management Activities
Staging Pile § 264.554	Pile	Remediation Waste	2 years plus one 180-day extension period	Storage
CAMU § 264.552	Designated Area or Unit within a Facility	Remediation Waste	None	Treatment, Storage, and/or Disposal

Temporary Unit § 264.553	Tank or Container Storage Area	Remediation Waste	1 year plus a 1 year extension period	Treatment and/or Storage
Area of Contamin-ation	Land-based Area of Contamination	Remediation Waste	None	Storage, In-Situ Treatment, Disposal

B. A summary of principal changes from the proposal

Changes from the proposal

The staging pile regulation promulgated today is based on the remediation pile regulation proposed on April 29, 1996 in the HWIR-media proposal. Today's regulation differs from the remediation pile proposal in five main ways: ~~1)~~

- the name is changed; ~~2)~~
- treatment in the pile is not allowed; ~~3)~~
- "temporary" is defined; ~~4)~~
- a more specific performance standard is added; and ~~5)~~
- the closure requirements are defined.

These changes, as well as other issues and responses to major comments, are discussed below.

First, EPA changed the name from "remediation piles" to "staging piles" to make it clear that these piles are to be used only for the temporary storage of remediation wastes, and not for other remediation activities such as treatment.

Second, the primary difference between the staging pile regulation finalized today and the proposed remediation pile regulations is that today's rule does not allow for treatment in the pile. The Agency recognizes the effectiveness of many treatment approaches relying on engineered piles, and does not wish to discourage their use, where appropriate. At the same time, one commenter vigorously opposed treatment in remediation piles. The Agency acknowledges that some forms of "treatment," (~~e.g.~~ for example, air stripping, or in some cases, biological treatment) may raise concerns with regard to air emissions. Therefore, for today's rule, EPA has restricted treatment to units other than staging piles, such as CAMUs. The CAMU decision criteria, as applied through the overseeing agency designation process, provide a way to ensure that the activities that occur in a CAMU have more protective design and operating controls than what is called for in the case of the short term, generally lower risk activities, allowed to take place in staging piles. The CAMU regulation includes, for example, a specific ground water monitoring requirement and an associated performance standard (40 CFR 264.552(e)(3)). Furthermore, the designation of a CAMU through a permit modification requires the more extensive Class 3 procedures while today's staging pile regulation requires Class 2.

In addition, the temporary unit regulation (§ 264.553, promulgated on February 16, 1993; 58 FR 8658) allows for treatment, as well as storage, of hazardous remediation waste in tanks or containers.[19] Like the CAMU rule, the regulations governing temporary units are designed to address the risks posed by treatment in the remedial setting. First, temporary units are containerized, rather than land-based, and therefore generally pose less risk of releases or cross-

[19] Using the temporary unit regulation, the Director imposes alternative requirements, based on site-specific conditions, for temporary tank or container units used for the treatment or storage of remediation waste during a remedial action.

media transfer than do the land-based staging piles. In addition, temporary units may only operate for one year unless they receive an extension. The temporary unit extension, which can be granted once for one year, can only be provided after a site-specific determination is made by the Director that continued operation of the unit will not pose a threat to human health and the environment and is necessary to ensure timely and efficient implementation of remedial actions at the facility (§ 264.553(e)). The temporary unit time limitation is more stringent than the time limit provided in today's staging pile regulation. In general, the relatively short amount of time allowed for treatment in a temporary unit addresses the greater risk to human health and the environment that ~~is inherent in~~ may arise through treatment activities.

Third, unlike the proposal, the final rule defines the temporary nature of staging piles as a two-year lifetime for the pile. At the end of the operating term for the staging pile (which can be designated by the Director as any amount of time up to two years), all hazardous remediation waste and residues in the pile must be removed unless an operating term extension (of up to 180 days) is granted by the Director.

Fourth, the Agency believes that the process and analysis necessary for the designation of a staging pile should be more straightforward than that needed for a CAMU due to the lower level of potential risks presented from the nature of activities that can take place in a staging pile, and EPA has designed today's regulation accordingly. ~~Since~~ Because staging piles are intended for the temporary storage of remediation waste, they will complement CAMUs and temporary units by providing program implementors and facility owners/operators with an intermediate option to use in a number of circumstances, such as when temporary units do not have the capacity for the chosen remedial strategy, but a CAMU is not necessary.

A modest difference between the proposed remediation piles and the staging piles promulgated today is that the Director will have more than the temporary unit decision factors (as proposed) to guide the establishment of design and operating criteria for a staging pile. In response to commenters' requests, today's rule includes a more specific performance standard, set out in § 264.554(d)(1), which expands upon the temporary unit decision factors to assist the Director in determining appropriate staging pile design and operating standards based on conditions at a particular site. This performance standard will be discussed in detail in the section of this preamble dealing with the staging pile performance criteria. The Agency's goal in providing this performance standard is to ensure that the design criteria used for a staging pile correspond to site- and waste- specific characteristics. The proposed regulation for remediation piles included only a reference to the decision factors for temporary units as a guide to the Director in setting case-by-case standards for remediation piles. Today's staging pile regulatory text includes language similar to the temporary unit decision factors, as well as a performance standard, both of which are incorporated directly into the regulation ~~in order~~ to add more predictability and assurance of protectiveness into the process of designating a staging pile. Clear expectations for performance should provide a beneficial focus for both the program implementor and the facility owner/operator.

Fifth, at the end of the staging pile's operating term or extension period, the staging pile is subject to one of two sets of closure requirements based on whether the staging pile has been located on either a previously contaminated or a previously uncontaminated area of the facility. If the pile has been located in an uncontaminated area of the site, any remaining contamination (containment system components, subsoils, etc.) must be decontaminated according to the clean

closure standard for waste piles in § 264.258(a) and the closure performance standard of § 264.111. (For interim status facilities, the standards to be used are located in § 265.258(a) and § 265.111.) On the other hand, if the pile has been located on a previously contaminated area of the site, all remediation waste, contaminated containment system components, and structures and equipment contaminated with waste and leachate must be removed or decontaminated within 180 days after the expiration of the operating term of the staging pile. Also, the facility owner/operator must decontaminate contaminated subsoils in a manner and pursuant to a schedule that the Director determines ~~is necessary to~~ will protect human health and the environment. These closure requirements were added to the final rule in response to comments pointing out that despite mentioning that "clean closure" was a requirement in the proposed rule preamble, the Agency had not included ~~such~~ this language in the rule text.

Consistent with the proposal

In keeping with the proposal, staging piles will be able to accept all types of solid, non-flowing remediation waste, rather than only hazardous contaminated media. Like CAMUs and temporary units, staging piles cannot be used to manage hazardous waste from ongoing industrial processes, commonly referred to as "as-generated" hazardous waste. In addition, as proposed, a staging pile may be used only for the storage of "solid, non-flowing" hazardous remediation waste. Flowing wastes are inappropriate for staging piles because of the possibility of releases and run-off of these wastes.

Also unchanged from the proposal is the provision that staging piles will not be considered land disposal units and therefore placement of remediation waste into a staging pile will not trigger ~~land disposal restrictions (~~LDRs~~)~~ or applicable ~~minimum technological requirements~~

(MTRs, (RCRA Section 3004(o). However, assuming the waste is subsequently managed in a way that triggers these requirements, LDRs and MTRs will ultimately apply to the remediation waste.

C. What is a staging pile? (§ 264.554(a))

The definition of staging pile in § Section 264.554(a) states that "a staging pile is an non-containerized accumulation of solid, non-flowing remediation waste (as defined in 40 CFR 260.10) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the Director in accordance with the according to the requirements of this section." This definition uses the definition of "pile", as defined in § 260.10 for waste piles (§ 264.250), but alters it to reflect the important limitations imposed on staging piles in today's rule. The definition of pile differs from the staging pile definition in that it:

- is not limited to non-containerized waste;
- addresses the accumulation of solid, nonflowing "hazardous waste," rather than "remediation waste," and;
- allows for "treatment or storage," rather than simply temporary storage.

The new definition allows waste in bags or other containers to be placed in staging piles, because such management may, in certain situations, be more environmentally protective than not putting the waste into containers. The definition also therefore makes it clear that today's rule

allows neither "as-generated" hazardous waste to be stored in a staging pile nor treatment or long-term storage to take place in a staging pile. As at proposal, EPA continues to believe that, like a "pile," a "staging pile" should be defined as non-containerized, thus differentiating it from containerized storage areas such as tanks and drums. The "solid, non-flowing" portion of the definition is included to ensure that flowing wastes will not be placed in the staging pile. Flowing wastes are inappropriate for storage in staging piles because of the possibility of releases and run-off. This provision includes the definition of staging pile from § 260.10 which is discussed in the definitions section of this preamble. This provision also limits where the owner/operator may locate a staging pile to within the contiguous property under the control or the owner/operator. This limitation was originally in the definition of remediation waste, however, as discussed in the definitions section of this preamble, EPA believed this limit was more appropriate in the regulatory text rather than in definitions. Finally, this provision specifies that staging piles must The second part of the definition was added to make it clear that, in order to qualify as a staging pile under today's rule, a pile must be designated as a staging pile by the Director according to this section. Without designation as a staging pile, a pile would will be considered a "waste pile" under § 264.250, and therefore subject to the requirements of that section (including LDRs and applicable MTRs). Since today's staging pile regulation is not self-implementing, the Director must incorporate the provisions for a staging pile into the a permit (either traditional permit or RAP), closure plan, or order in which it is designated.

In the preamble to the proposed rule, the definition of remediation pile reads:

"*Remediation Pile* means a pile that is used only for the temporary treatment or storage of remediation wastes, including hazardous contaminated media (as defined in § 269.3), during

remedial operations." This definition was altered for a number of reasons. First, the Agency feels that incorporating the definition of "pile," altered as described above, will be clearer than incorporating by reference. Furthermore, EPA believed that it was important in the proposed rule to specify that remediation wastes in this proposed definition included, but were not limited to, hazardous contaminated media. This was because many provisions of the proposed rule applied only to hazardous contaminated media and not to other remediation wastes. Because the provisions of today's final rule apply to all remediation wastes, and because EPA has determined that the existing definition of remediation waste is clear on this point, the Agency now believes that this clause, "including hazardous contaminated media," is not necessary in the final rule. since because, for the reasons discussed previously, staging piles will accept hazardous remediation waste rather than only hazardous contaminated media, this portion of the definition also had to be changed. In addition, treatment is no longer mentioned in the staging pile definition, since treatment will not be allowed under today's rule. None of the commenters provided comments directly addressing the definition of remediation pile.

In keeping with the proposal, staging piles will be able to accept all types of solid, non-flowing remediation waste, rather than only hazardous contaminated media. Despite criticism from one commenter who stated that only media should be allowed to be managed in a remediation pile, not other forms of remediation waste, the Agency has retained this approach because non-media wastes can be generated in very high volumes creating remedial obstacles similar to those created by large volumes of hazardous contaminated media. In support of the proposed approach, another commenter argued that because contaminated media is often "found in the same shovel" as sludges and debris it would be both difficult and inefficient to attempt to

regulate these differently. At sites ~~such as these~~ where this occurs, staging piles would likely not facilitate an appropriate remedy if limited to accepting only media.

One commenter suggested that the Agency should encourage the management of sludges and other non-media remediation wastes in tanks and containers instead of piles. EPA believes that the Agency has at least partially addressed the commenter's concern by limiting the use of staging piles to non-flowing wastes. This restriction serves to eliminate some sludges as well as other problematic wastes. EPA also emphasizes that tanks and containers can provide important protection in certain circumstances (for example, to address run-off concerns), and the Agency recommends the use of these units where appropriate. At the same time, EPA disagrees with the commenter's premise that a waste's status as "media" or "non-media" is particularly relevant to the kind of unit that waste should be stored in. The concentration of hazardous constituents, their leachability, and their volatility are far greater concerns. More generally, EPA believes that the decision on which specific remediation unit is most appropriate at a given cleanup depends on numerous site-specific factors, and that this decision should be made through the site-specific permit process. EPA has issued extensive guidance on the management of remediation waste, both under RCRA and CERCLA (including the Best Management Practices Guidance developed in conjunction with this rule), which site managers and regulators can use in making their decision. EPA, however, has concluded that more specific direction on this issue is not appropriate or necessary in today's rule. ~~The Agency appreciates the concerns of the commenter; however, EPA remains convinced that piles are often the most effective option for short-term storage of remediation waste. Therefore, today's rule provides the Director with flexibility in determining when a staging pile is appropriate.~~

Finally, as mentioned above, the final rule provides that staging piles may be used only for storage of remediation wastes. "Treatment" will not be permitted primarily for the reasons outlined in the "*A Summary of Changes from the Proposal*" section of this preamble. To summarize, treatment was a particularly sensitive issue for one commenter and EPA acknowledges that treatment, in some cases- such as air stripping- may involve higher levels of risks than typical storage. Furthermore, treatment, especially biological treatment, is often a long-term activity. Since staging piles are to be temporary, they will not necessarily require fixed controls such as leachate collection and removal systems, which are more appropriate for long-term use. Instead, staging piles should be relatively easy to create and dismantle given their temporary nature and ~~in order~~ to expedite remedial activities by providing the opportunity for short-term storage. Given these considerations, EPA has decided that treatment should occur in units that provide more specific safeguards; ~~i.e.~~ that is, treatment units meeting 40 CFR Part 264 requirements, including those units specifically designed for treatment in the cleanup context (~~e.g.~~ for example, CAMUs and temporary units).

Although many commenters supported both treatment and storage in temporary piles, no commenter suggested that, without including the possibility of treatment, the piles would not facilitate the remedial process. Rather, a number of commenters directly supported the need for temporary storage of remediation waste in piles, without LDR or MTR applicability, before subsequent management. One commenter specifically stated that EPA should limit these piles to storage only, citing the increased potential for emissions to the air and other pathways if treatment were allowed. The Agency believes that today's staging pile regulation adequately addresses the commenters' concerns.

D. How is a staging pile designated? (§ 264.554(b))

Staging piles are subject to a few key limitations. First, today's rule ~~defines~~ specifies that the facility owner/operator may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to LDRs)[20] only ~~in accordance with~~ if you follow the standards and design criteria the Director has designated for that staging pile. This language is an outgrowth of the language proposed in § 264.554(a), which ~~provides that a staging~~ provided that a remediation pile ~~may~~ would only be used for the storage of remediation waste based on design and operating standards the Director ~~has~~ had designated on a case-by-case basis. Both versions of this language make it clear that ~~staging~~ remediation piles ~~are not~~ would not be self implementing and would have standards that must be designated by the Director. The Agency received no adverse comments on this aspect of the proposal, and so has only re-worded this requirement for readability in the final rule.

Second, the final rule states that the Director must designate the staging pile in either a permit or, at an interim status facility, in a closure plan or order (~~orders may only be used at interim status facilities~~ consistent with §§ 270.72(a)(5) and (b)(5)). Consequently, staging piles can also be approved under a ~~Remedial Action Plan (~~RAP~~)~~ as finalized by today's rule in Part 270 (because a RAP is a form of a permit). The proposed rule would have required remediation piles to be designated in a "permit or order" (proposed § 264.554(a)). Commenters did not question this approach; however, today's rule includes one clarifying change to the proposed regulatory

[20] For a discussion of situations where remediation wastes that are no longer "hazardous" may nonetheless remain subject to LDRs see 63 FR 28617 - 28620 (May 26, 1998).

language, as well as an additional mechanism for designating a staging pile.

The Agency adds a clarifying change to today's final rule language which specifies that staging piles may be designated in orders at interim status facilities only. In the proposal, the Agency did not specify when orders could be used to designate a staging pile. EPA intended that the same mechanisms be used under today's rule to designate staging piles as can be used under the current regulations to designate other types of units. At most facilities, it is necessary to receive a permit to implement hazardous waste management units. However, at interim status facilities, units can be implemented according to §§ 270.72(a)(5) and (b)(5) when required under an order. EPA, therefore, has included the language in the final staging pile rule clarifying that orders may be used to designate a staging piles at interim status facilities to be consistent with how other types of units can currently be designated.

In today's rule EPA has included an additional mechanism-- the closure plan-- for the designation of staging piles at interim status facilities, since the Agency believes that staging piles will be useful to facility owner/operators where remediation is conducted during the closure of waste management units. EPA believes it is appropriate to allow staging piles to be designated through closure plans since final closure plans are enforceable and because the closure plan approval process, both at permitted and interim status facilities, incorporates sufficient public participation. In addition, EPA believes it is also appropriate to make closure plans available for the approval of staging piles at interim status facilities because an order may not always be suitable. For example, the owner/operator of an interim status facility may wish to conduct cleanup at a regulated unit and achieve closure by removal even when he is not required to do so under an order. As part of the closure, the facility owner/operator may find it most practical to

stage the removed waste in a pile, before it is moved to an on or off-site treatment unit. In ~~such a~~ this case, the facility owner/operator can include staging piles, if necessary for ~~such~~ voluntary cleanup, into his closure plan.

At a permitted facility, a closure plan is a part of the original permit, and so is approved following the traditional permit approval process. Modifications to closure plans are incorporated into permits as permit modifications and follow the appropriate permit modification procedures found in § 270.42. Because staging piles require a Class 2 permit modification, as discussed in the *"How ~~Can~~ may my existing permit (for example, RAP), closure plan, or order be modified to allow the use of a staging pile?"* section of today's preamble, a staging pile incorporated into a closure plan modification would also require at least Class 2 procedures. ~~Since~~ Because staging piles can be approved through permits, it follows that a staging pile can be designated in a closure plan at a permitted facility. Nonetheless, EPA wanted to make this clear, and therefore has explicitly stated that staging piles can be designated in closure plans.

At interim status facilities, the process used to gain approval of a closure plan also requires an opportunity for public notice and comment. Specifically, ~~such~~ these closure plans are approved according to the requirements of § 265.112(d). These requirements include the opportunity, available through a newspaper notice, for the facility owner/operator and the public to submit written comments on the closure plan and request modifications to the plan within 30 days of the date of the notice. In addition, the Director can hold a public hearing to clarify any issues regarding the closure plan. Therefore, approved closure plans can be used to designate staging piles under today's rule.

The regulations regarding staging piles are expected to be applicable or relevant and

appropriate requirements (ARARs) for the remediation of RCRA hazardous wastes at CERCLA sites. In ~~such~~ these cases, staging pile requirements would be incorporated into CERCLA decision documents rather than permits, closure plans, or orders. This section of the rule also includes language to make it clear that a staging pile only need be designated in a permit (~~e.g.~~ for example, a RAP), closure plan, or order when hazardous remediation waste (or remediation waste otherwise subject to LDRs) is being stored. Non-hazardous remediation waste or remediation waste that is no longer subject to LDRs can, of course, be stored in a pile without being designated as a "staging pile."

The third provision of new § 264.554(b) is the provision that the Director must establish conditions in the permit, closure plan, or order ~~in accordance with~~ that comply with paragraphs (d) - (k) of the staging pile regulation. This portion of the regulation simply serves to affirm that the provisions of the staging pile regulation will be incorporated by the Director into the designating mechanism for the pile.

E. What information must I provide to get a staging pile designated? (§ 264.554(c))

Section 264.554(c)(1) sets out the requirement that the facility owner/operator must provide information to the Director that will enable him to designate a staging pile ~~in accordance with~~ according to the regulatory requirements in today's rule. The Agency does not believe that the evaluation of these performance criteria will generally involve detailed quantitative analyses; the level of detail needed by the Director to make decisions on appropriate design and operating criteria will vary case-by-case depending on site-specific factors, such as proximity to points of

exposure, physical and chemical characteristics of the waste, and hydrogeological conditions at the site. The Agency anticipates that the information contained in the RCRA Facility Investigation or an analogous document will contain most of the information necessary to designate a protective staging pile. The Agency's intention with this portion of the regulation is not to create a burdensome reporting requirement, but rather to authorize the Director to require sufficient information to enable him to designate a staging pile.

Today's rule also requires a certification by an independent, qualified, registered professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information provided by the facility owner/operator, that ~~such~~ this certification is not necessary to ensure a staging pile that is protective of human health and the environment (§ 264.554(c)(2)). This certification should be incorporated into any documentation necessary for the permit, closure plan, or order in which the staging pile is designated. The Agency's intention is not to create an obstacle for the facility owner/operator, but rather to provide assurance that the technical information is accurate, has been prepared by technically competent personnel, and can be relied upon by the Director. If the Director believes that this certification is unnecessary, such as in a case where the staging pile design is to be very simple due to a short term of storage or relatively low constituent concentrations, the Director may waive the need for the professional engineer certification.

Finally, RCRA section 264.554(c)(3) enables the Director to request any additional information that he determines is necessary to protect human health and the environment. EPA expects that this provision will be used infrequently, but considers it important to ensure that all pertinent information is available to the Director when making a decision on designating a staging

pile or staging pile extension. Because this is not intended to be a burdensome provision, the Director should restrict ~~such~~ any information request to that which is necessary to protect human health and the environment. The Agency intends this portion of the regulation to reinforce the Director's ability to request additional information to ensure that, for example, staging piles are designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment (§ 264.554(d)(1)(ii)).

Although an information requirement was not included explicitly in the proposed remediation pile regulation, EPA believes that the Director's need for information ~~in order~~ to designate a protective staging pile ~~is~~ was a principle embedded in the proposal. The proposed remediation pile regulation was centered around providing, both the regulatory agency and the facility, site-specific flexibility with the goal of matching the risk-based regulatory requirements with the conditions at a particular site. This flexibility can only be granted when there is an exchange of accurate and sufficient information between the facility and the regulatory agency. Moreover, under the proposal, the Director could, of course, have denied a request to designate a remediation pile if he did not have sufficient information to make a sound protectiveness judgement, so his ability to obtain additional information was implicit. Therefore, ~~in order~~ to clarify this expectation, today's section 264.554(c) explicitly defines what kind of information must be provided to the Director ~~in order~~ to enable him to make the findings mandated by the regulations.

F. What performance criteria must the staging pile satisfy? (§ 264.554(d))

Performance standards for staging piles (§ 264.554(d)(1))

Many commenters requested that the Agency avoid prescriptive national standards that would not take into account site-specific considerations and therefore would be likely to over or under estimate the exact design and operating requirements needed at any given facility. There were, however, persuasive comments suggesting that a performance standard for staging pile design and operation is necessary, in addition to the decision factors, ~~in order~~ to better guide the program implementor and facility owner/operator in setting site-specific design and operating criteria that will protect human health and the environment. Consequently, today's rule finalizes a performance standard that, in combination with a specific time limit for the piles, will ensure that staging piles are protective without sacrificing the flexibility that helps make staging piles an implementable option at facilities.

The Agency proposed a standard for remediation piles that reads "the Director may prescribe on a case-by-case basis design and operating standards for such units that are protective of human health and the environment." In response to comments suggesting a more specific performance standard for staging piles, the Agency has promulgated today's performance standard for staging piles. The staging pile performance standard is based on the principles underlying the staging piles provisions, as well as provisions that were already included in the proposed remediation pile regulation. In designating the performance standard the Agency looked to the standard in the CAMU rule as guidance (§ 264.552(c)).

The performance standard finalized in today's rule (§ 264.552(d)(1)) supplements the decision factors for temporary units as proposed. The Agency believes that finalizing more than the decision factors provides the designating authority with more complete guidance for the

establishment of protective design and operating criteria. Under the rule, the decision factors are elements that must be considered when establishing standards for the staging pile. The performance standard is the Agency's overall requirement for the construction and engineering of the unit. There were some commenters that suggested the Agency promulgate specific technical requirements for the staging piles. These comments appear to be based on the concern that the proposed remediation piles, which allowed treatment and longer term storage, did not have baseline standards. EPA believes that today's staging pile regulation, which allows short-term storage only, would not be improved by prescriptive standards due to the relatively low risk posed by the piles and the requirement that the Director take into account site-specific conditions in setting standards.

The performance standard for staging piles has three parts. First, "the staging pile must facilitate ~~the implementation of~~ a reliable, effective and protective remedy."(§ 264.552(d)(1)(i)) Second, "the staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (~~e.g.~~ for example, through the use of liners, covers, run-off/run-on controls, as appropriate)," (§ 264.552(d)(1)(ii)). Finally, "the staging pile must not operate for more than two years, except ~~in cases where~~ when the Director grants an operating term extension ~~is provided by the Director pursuant to pursuant to~~ under paragraph (i) (entitled "~~Can~~ May I Receive an Operating Extension for a Staging Pile?") of this section. You must measure the two-year limit, or other operating term specified by the Director in the permit, closure plan, or order, ~~must be measured~~ from the ~~initial placement of~~ first time you place remediation waste into a staging pile. You must maintain a record of the date

when you first placed remediation waste into the staging pile ~~of initial placement date~~ for the life of the permit, closure plan, or order, or three years, whichever is longer," (§ 264.552(d)(1)(iii)).

Therefore, in designating a staging pile, the first consideration of the Director will be whether the pile will facilitate the implementation of a reliable, effective, and protective remedy (§ 264.554(d)(1)(i)). This criterion is designed to require a site-specific showing that the premise behind allowing for these piles (see ~~proposal:~~ 61 FR 18831) is satisfied at each site where they are used. By including this criterion, the Agency is emphasizing that the goal of today's staging pile regulation is not to undercut the protectiveness of the existing Subtitle C regime, but rather to assist in the execution of reliable, effective, and protective remedies.

The second criterion requires that activities associated with the design and operation of the staging pile must prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (§ 264.554(d)(1)(ii)). This portion of the performance standard is an outgrowth of the proposed remediation pile regulation, ~~since~~ because it simply adds specificity to the proposed rule's requirement that the standards must be "protective of human health and the environment" (proposed § 264.554(a)) and that the "Director shall specify in the permit or order ... any requirements for control of cross-media contaminant transfer" (proposed § 264.554(d)). Section 264.554(d)(1)(ii) also builds upon the fourth and sixth decision factors mentioned ~~at the beginning of~~ later this section of the preamble (§ 264.554(d)(2)(iv) and (vi) which require the Director to consider the potential for releases from the unit and the potential for human and environmental exposure when establishing standards for the staging pile). A similarly worded performance standard was suggested by one of the

commenters on the proposal. The Agency agrees with the commenter that it is advantageous to include ~~such~~ a provision directly in the performance standard for staging piles, as is finalized in today's rule. The Agency emphasizes that minimizing or adequately controlling cross-media transfer (~~e.g.~~ for example, transfer to air through volatilization or particulate matter) is vital to the protectiveness of a staging pile.[21]

This second criterion is also included to ensure that there will be no unacceptable risks created by the storage of hazardous remediation waste in a staging pile either during the remedial activities or afterwards. Liners, covers, and run-off/run-on controls are all examples of design stipulations that might be appropriate in specific circumstances, and these examples have been included directly in the regulation to assist the Director. These examples, however, are in no way a definitive list of possible design stipulations that could be included in the permit, closure plan, or order, nor would they always be necessary. Depending on site-specific circumstances, ground water and air monitoring equipment may also be appropriate to ensure adequate attention to cross-media transfer from a staging pile. However, the Agency anticipates that this monitoring equipment ~~would~~ will often be installed as part of the overall cleanup at the site rather than for the staging pile itself. In addition to the type of substantive standards and design criteria described above, the rule also allows the Director to specify operating requirements for the staging pile by providing that the Director must include "standards." Examples of ~~such~~ these operating requirements include appropriate inspection schedules and recordkeeping.

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[21]Consulting the Agency's *Best Management Practices (BMPs) for Soil Treatment Technologies* (EPA530-R97-007, May 1997) guidance document, which was developed to provide guidance on how to identify and minimize the potential for causing cross-media contamination during implementation of cleanup technologies for contaminated soils or solid media, is recommended to assist in ensuring that this portion of the performance standard is achieved.

The Agency believes that the Director will be able to make a determination of what design and operating requirements are necessary to prevent or minimize releases from the staging pile based on information from the facility owner/operator, site assessments, past overseeing agency experience, and standard good engineering practices. If the facility owner/operator does not provide the information necessary for an informed decision to be made regarding what requirements are protective, the staging pile should not be designated by the Director.

One commenter suggested a "no significant migration" standard be included in the rule. The Agency agrees that a staging pile should be designed to prevent any significant additional migration of hazardous waste and hazardous constituents. However, EPA did not include this precise language in the final rule because EPA believes that the requirement that a staging pile be designed so as to prevent or minimize releases of hazardous waste and hazardous constituents into the environment and minimize or adequately control cross-media transfer will have an equivalent effect.

The final performance criterion (264.554(d)(1)(iii)) limits the use of staging piles to two years, unless a 180-day extension is provided, and establishes a recordkeeping requirement. Refer ~~below~~ to the discussion later in this section on time limits for details of this provision.

Decision factors for staging piles (§ 264.554(d)(2)

In the proposal, EPA requested comment on whether to prescribe any specific design or operating standards for remediation piles or to allow the Director to establish requirements on a case-by-case basis using the decision factors specified for temporary units. The Agency's intent to use the slightly modified temporary unit decision factors, as expressed in the proposal, received no negative comments and consequently they are finalized in today's rule. The Agency continues

to believe that these decision factors are reasonable and will result in sound decisions for staging pile design. Specifically, the rule requires the Director to consider the following factors in establishing the standards and design criteria for the staging pile:

(1) Length of time the pile will be in operation;

(2) Volumes of wastes to be stored;

(3) Physical and chemical characteristics of the wastes to be stored in the unit;

(4) Potential for releases from the unit;

(5) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and

(6) Potential for human and environmental exposure to potential releases from the unit.

EPA believes that these considerations will help ensure that the staging pile will be designed to protect human health and the environment.

G. ~~Can~~ May a staging pile receive ignitable, reactive, or incompatible remediation wastes? (§ 264.554(e) ~~and (f))~~

The final rule contains a new provision, § 264.554(e), that addresses the handling of ignitable or reactive remediation wastes in a staging pile. This new provision is a modification of § 264.256, the special requirements for ignitable and reactive wastes in a waste pile. Section 264.554(e) prohibits placement of ignitable or reactive remediation waste into a staging pile unless the waste is made non-ignitable or non-reactive as these characteristics are defined in §

261.21 and § 261.23, while also complying with § 264.17(b) (which lists reactions that precautions must be taken to prevent) or the waste is managed in such a way that it is protected from materials or conditions which may cause it to ignite or react. EPA expects that non-flowing wastes encountered during cleanup will rarely be ignitable or reactive. ~~Where~~ When they are, however, they clearly require continuing protection from conditions which may cause them to ignite or react. An important factor to note is that mixing of wastes in a staging pile is relatively common when storing large volumes of waste. Unless ~~such~~ these wastes are rendered non-ignitable or non-reactive, the facility owner/operator may find it difficult to protectively manage ~~such~~ these wastes in a staging pile. Reactive wastes may be particularly difficult to manage since a staging pile can be directly exposed to the environment. The Agency will allow the management of ignitable or reactive wastes in a staging pile, as long as the wastes are protected from the material or conditions which may cause them to ignite or react. The modification to § 264.256 makes the provision applicable to remediation waste in staging piles rather than hazardous waste in waste piles and enhances its readability. Also, the language modified from that of § 264.256 does not allow waste to be treated, rendered, or mixed immediately after placement in a staging pile, although ~~such~~ this language is included in the waste pile regulation (§ 264.256(a)). Since treatment is not permitted in a staging pile, this portion of the waste pile regulation was considered by the Agency to be inappropriate and therefore was not included in today's rule.

H. How do I handle incompatible remediation wastes in a staging pile? (§ 264.554(f))

The final rule also contains a new provision, (§ 264.554(f)), that deals with the handling of incompatible wastes in a staging pile. This provision is a modification of § 264.257, the special requirement for incompatible wastes in waste piles. The modification makes the provision

applicable to remediation waste in staging piles rather than hazardous waste in waste piles and enhances its readability. The potential dangers from the mixing of incompatible wastes include, but are not limited to, extreme heat, fire, explosion, and violent reaction. Clearly, the potential impacts on human health and the environment which could result from ~~such~~ these conditions must be avoided. To this end, the regulation includes a provision that staging piles should not contain incompatible wastes unless precautions are taken to avoid the reactions listed in § 264.17(b). The regulation also states that if remediation waste in a staging pile is stored near incompatible wastes, precautions must be taken to ensure that these materials are protected or separated from one another. Finally, for the same reasons as those provided above, today's regulation states that remediation waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with § 264.17(b).

Although these provisions were not included in the proposed rule, EPA believes that it is reasonable to include them in today's final rule ~~since~~ because the provisions do not create an additional regulatory burden for either the Director or facility owner/operator. The Director would normally examine the possibility of risk from ignitable, reactive, or incompatible wastes being placed in a pile before designating a pile, so these provisions simply serve to ensure that ~~such~~ this caution will be exercised in every case.

I. Are staging piles subject to Land Disposal Restrictions (LDR) and Minimum Technological Requirements (MTR)? (§ 264.554(g))

Like placement of remediation waste into CAMUs, placement of remediation wastes into staging piles will not trigger RCRA ~~land disposal restrictions~~ LDRs. Because staging piles are generally a subset of units that, absent today's rule, would be CAMUs, this provision is based on the Agency's view, fully explained in the preamble to the CAMU rule, that placement into ~~such~~ these units does not constitute "land disposal" under RCRA section 3004(k) (See 58 FR 8658, 8662 (February 16, 1993)). As stated in that ~~Notice~~ preamble, EPA believes this interpretation is reasonable "since remedial areas are not a listed regulatory unit under 3004(k), because Congress recognized that the application of LDRs to remediation wastes might require a different framework than that developed for the application to as-generated wastes, and, . . . because the direct application of preventive standards to remediation wastes is often inappropriate and counterproductive." (See 58 FR 8662). Also, as explained in the preamble to the CAMU rule, staging piles would not be subject to the ~~minimum technological requirements~~ MTRs under section 3004(o), ~~since~~ because the pile is not a land disposal unit subject to those requirements.

J. How long may I operate a staging pile? (§ 264.554(h))

The remediation pile provisions, as proposed, did not set limits on the amount of time that remediation waste could be in the pile, other than to say that these piles would be "temporary" and only available for use during remedial operations. The proposal requested comment on whether time limits and renewals that prescribe the lifetime of remediation piles should be set at the national level. Several commenters responded that "temporary" was not an adequate standard and a number of them stated specifically that a two-year time limit would be appropriate for the

piles. EPA agrees that there is a need to define "temporary" in the context of staging piles. The Agency also agrees with commenters who argued that a two-year time limit is reasonable for the staging piles and therefore has promulgated this limit in today's rule. The Agency does not believe that staging piles should exist indefinitely or with an undefined "temporary" lifetime because ~~such~~ these units might not be designed in a manner protective enough for the "de facto" disposal that might occur. In other words, if "temporary" was left as the only standard, the storage in staging piles could take place for such a long period of time that the risks to human health and the environment would be essentially equivalent to a disposal scenario, which the staging piles standards in today's rule are not designed to address. The Agency does not believe it is necessary to create standards in today's rule to accommodate a long-term storage scenario because long-term storage and disposal can be conducted in CAMUs and, as discussed below, the operations the Agency intends to accommodate in this rule-- staging-- can generally be conducted during the 2-year time period.

EPA believes that a time limit that generally corresponds to the length of time needed for staging or storage activities at a site is appropriate. The two-year time limit for the use of a staging pile ~~without an extension~~ promulgated in today's rule fits within the time limits suggested in the comments, which ranged from six months to three years. One commenter stated that site cleanups can often last for years and suggested that "temporary" piles be authorized for a maximum of two years with a one-year extension available after a showing that the extension does not threaten increased environmental risk. Another commenter suggested that the best way to assure that a "temporary" unit is indeed temporary is to specify a two year time limit. In practice, ~~an~~ a facility owner/operator could request, or the Director could designate on his own initiative, a

shorter lifetime for a staging pile and consequently the Director could set design and operating requirements that would take into account this shorter period of storage. The Director is encouraged to establish a duration shorter than two years, where appropriate. Longer-term use of a staging pile, however, is much more similar to "disposal" activities which provide a greater opportunity for releases. As stated in the "*Summary of Principal Changes from the Proposal*" section above, the Agency has concluded, for the purposes of today's rule, that land-based treatment activities, long-term storage, and permanent disposal are more appropriately addressed using the CAMU provisions in § 264.552.

One commenter suggested that a two-year time limit on staging piles is also consistent with the limits on the storage of prohibited wastes under section 268.50, EPA's regulations implementing RCRA section 3004(j).[22] In response to this comment, which highlighted the relationship between the staging pile provisions and section 268.50, the Agency today is also amending section 268.50 to expressly provide that storage of hazardous wastes in approved staging piles is not subject to the prohibition contained in that section (§ ~~268.50(a)(4))~~ 268.50(g)).

Section 268.50 provides that hazardous wastes prohibited from land disposal may not be stored unless certain conditions are met. For treatment, storage, or disposal facilities, those conditions are that ~~such~~ this storage takes place in tanks, containers or containment buildings and is "solely for the purpose of accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal." In addition, dates of accumulation generally

[22] RCRA section 3004(j) provides that wastes prohibited from land disposal may be stored "solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal."

must be clearly marked and recorded.

EPA believes an express exemption from these requirements (as opposed to amending them to add staging piles to the list of units in which storage may conditionally take place) will eliminate the need for regulatory agencies and site owner/operators to engage in unnecessarily duplicative factual findings, ~~since~~ because the concerns underlying the requirements of 268.50 (~~i.e.~~ that is, that storage of prohibited wastes only occur "as necessary to facilitate proper recovery, treatment, or disposal") will necessarily be satisfied during approval of the staging pile. Specifically, as discussed above, by imposing a two-year time limit on staging pile operation, today's rule is consistent with the time limits in section 268.50 (and, by way of analogy, the two-year cap on case-by-case capacity variances under RCRA section 3004(h)(3)). In addition, staging piles will only be used during remediation, a process that is specifically designed to "facilitate proper recovery, treatment or disposal" of wastes. The final staging pile rule promulgated today will further ensure this result, since it specifically requires that staging piles only be approved where they will "facilitate the implementation of a reliable, effective and protective remedy."

The final rule also makes clear that the operating term limit (§ 264.554(h)) is to be measured from the initial placement of remediation waste in a staging pile. The closure process must begin at the end of the operating term or extension term (if approved by the Director) for the staging pile. EPA believes that, to make this requirement implementable, a record must be kept which defines the date of initial placement of waste into the staging pile. Therefore, EPA has included a provision in the staging pile performance standard (§ 264.554(d)(2)(iii)) that requires that a record of initial placement date be kept by the facility owner/operator for the life of the

permit, closure plan, or order or for three years, whichever is longer. This will aid in the enforcement of staging pile time limits by providing a specific date by which to measure how long remediation waste has been stored in the pile. The three-year period used in today's rule as the minimum period of record retention, is in keeping with the recordkeeping requirement of "at least three years" found in § 270.30(j) (which outlines the monitoring and recordkeeping regulations applicable to all permits) and a number of other recordkeeping requirements in RCRA regulations (~~e.g.~~ for example, § 262.40).

K. ~~Can~~ May I receive an operating term extension for a staging pile? (§ 264.554(i))

In the proposal, the Agency requested comment on whether any time limits placed on remediation piles should be renewable. In response, an operating term extension period was suggested by a number of commenters. Recommendations for the length of this extension period varied from six months to three years. The Agency agrees with these commenters in that it can be difficult to judge in advance the amount of time that will be necessary to store remediation wastes in furtherance of a remedy. EPA recognizes that in some cases unforeseen circumstances may dictate that a staging pile remain in service beyond the limit originally set in the permit, closure plan, or order. For example, unexpectedly large volumes of waste may need to be handled ~~in order~~ to complete the remedy, or the remedial process may be slowed by forces beyond the control of the facility owner/operator or Director. An extension would be appropriate, for example, when wastes being stored in a staging pile are to be taken to an off-site facility, but that facility no longer has the capacity, or is unwilling, to accept the wastes. Consequently, today's

rule includes a provision, § 264.554(i), that states the Director may provide one extension of up to 180 days as a modification of the original permit, closure plan, or order.

~~In order~~ To justify to the Director the need for an operating term extension, the facility owner/operator must provide sufficient information to enable the Director to make a determination that~~: 1)~~ continued operation of the unit:

- will not pose a threat to human health and the environment; and ~~2)~~
- ~~continued operation of the unit~~ is necessary to ensure timely and efficient implementation of remedial actions at the facility. In addition, the regulation states that the Director may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary to ensure protection of human health and the environment. This language is based, in large part, on the time limit extension language for temporary units, which provides a one-year extension beyond a one-year operational limit (§ 264.553(e)). EPA believes that this language is both appropriate and reasonable for staging piles. The Agency believes that the language addresses the concerns of commenters who suggested, among other things, that the extension should be consistent with the extension in § 264.553, especially since the temporary unit extension provision can only be approved after a showing that a time extension will not threaten increased environmental risk. The Agency agrees with these comments, as well as with other commenters who saw the need for an extension period to ensure that unexpected circumstances will be accommodated by the staging pile regulations. The Agency believes that the criteria that must be met before the Director grants an extension of the operating term for a staging pile are appropriate as they correspond to the overall goals of the

staging pile regulation.

The initial criterion, ensuring that continued operation of the unit will not pose a threat to human health and the environment, is a reasonable test to maintain the protective nature of the staging pile despite the increased storage time. The second criterion allows the Director to specify further standards or design criteria for the staging pile if the increased storage time requires more protective or different specifications. EPA believes that it is unlikely that additional standards ~~would~~ will be necessary for only a 180 day extension; however, this criterion will allow the Director to impose ~~such~~ these standards in unusual circumstances. One commenter stated that the temporary unit extension provision of section § 264.553(e) was too prescriptive to be appropriate for remediation piles. This commenter felt that any extension should be approved or rejected based solely on site-specific considerations. However, EPA believes that the criteria finalized today leave the Director with ample discretion to consider site-specific factors in making decisions on extensions~~. They simply~~, and yet place appropriate limits on that discretion ~~what the Agency believes, for the reasons outlined above, are appropriate limits on that discretion~~. The Agency also believes that limiting the number of extensions to one of up to 180 days will reduce the potential administrative burden that could be created by facility owner/ operators seeking multiple extensions for staging pile operations, as well as ensuring that staging piles are indeed "temporary."

Furthermore, if the facility owner/operator or Director can anticipate, before designating the staging pile, that additional time will be necessary for staging activities, ~~the~~ EPA recommends the use of a CAMU instead of a staging pile. If the facility owner/operator and Director are not able to anticipate that a CAMU will be preferable to a staging pile, the option remains to

designate an existing staging pile as a CAMU through the CAMU approval process. This might require modifications to the design of the staging pile to address the risk posed by longer-term storage. Modifications necessary to designate a CAMU from what was previously a staging pile might include leak detection systems, run-off controls, air emissions controls, ground water monitoring systems, and leachate collection systems. However, the specific modifications ~~would~~ will depend on the nature of the unit and the future plans for it.

L. What is the closure requirement for a staging pile located in a previously contaminated area? ~~Staging Piles?~~ (§ 264.554(j) ~~and (k)~~)

The preamble to the proposal stated that "remediation piles would be required to close by removal of all wastes (i.e. 'clean close')." This requirement, however, was not explicitly stated in the proposed regulation. This created confusion with some commenters, who requested that "clean closure" be defined and stated clearly in the final rule. In response to these comments, explicit closure requirements are included in today's rule. EPA foresees two scenarios applicable to closure in which a staging pile might be designated: (1) in an area of previous contamination, with remediation waste consolidated from non-contiguous areas of contamination (~~since~~ designation of a staging pile is not necessary if all the wastes are consolidated from within one area of contamination, see discussion below); and (2) in an uncontaminated area of the site. Consequently, the closure requirement is divided into two parts: § 264.554(j),which applies to staging piles designated at contaminated areas of the site; and § 264.554(k) which applies to staging piles designated at uncontaminated areas of the site.

At closure of staging piles located in previously contaminated areas, the final rule requires the facility owner/operator to "remove or decontaminate all remediation waste, contaminated containment system components, and structures and equipment contaminated with waste and leachate within 180 days after the expiration of the operating term of the staging pile." The Agency included this provision, which contains typical "clean closure" language (see § 264.258(a)), to ensure that closure of staging piles at facilities is completed in a safe and protective manner, as well as within a reasonable time frame. The 180-day time limit for removal and decontamination is an outgrowth of comments made requesting that the Agency ensure that temporary piles will indeed be temporary and of the intention expressed in the preamble to the proposal to require clean closure, a process under the Agency's regulations that must be complete within 180 days (§ 265.113). The Agency believes that a 180-day period is reasonable, as well as comparable to existing closure requirements in Part 264 and 265.

The closure standard for staging piles designated in previously contaminated areas differs from the typical ~~"~~clean closure~~"~~ standard in the way that any contaminated subsoils created by the staging pile will be addressed.[23] Today's standard, instead of simply requiring "removal or decontamination," specifies that the facility owner/operator, "must also decontaminate contaminated subsoils in a manner, and pursuant to a schedule, that the Director determines ~~is necessary to~~ will protect human health and the environment." This change was made in response

[23] Of course, EPA expects (and today's rule requires) that staging piles located in previously contaminated areas will be designed and operated in a manner that prevents or minimizes the release of additional contaminants to the degree technically practicable. A prime objective of remedial waste management is preventing further releases that will require cleanup. Consequently, EPA fully expects that at the majority of facilities that use staging piles, no decontamination of subsoils will be necessary due to the protective structure of the site-specific staging pile design and operating standards. However, as with other units regulated under Subtitle C, the Agency acknowledges the possibility that residues can remain after all remediation waste is removed from the pile and containment system components are decontaminated.

to a commenter who identified the utility of considering the closure of a pile as part of the ongoing remedial process at a site. The Agency was persuaded by this comment to design a standard that recognizes that staging piles will only be used in the cleanup context, where ~~they~~ the staging piles will likely be an intermediate step towards the cleanup of a site. In addition, since the portion of the facility where the staging pile will be located will have been previously contaminated, it may be very difficult to distinguish this previous contamination from residues that may have been left by the staging pile. Therefore, in designing today's standard, the Agency felt it was appropriate to include a standard that would allow any cleanup of soils contaminated by the staging pile to be coordinated with the site remedy, rather than addressed under a distinct set of resource-intensive requirements.

~~Since~~ Because the final remedy at the site may not occur within 180-days after the operating term of the staging pile expires, the closure requirement does not include a time limit for this decontamination of contaminated subsoils. It is the Agency's expectation that the decontamination of any contaminated subsoils will be consistent with the overall remedy at the site. The Agency expects that the Director will often incorporate the schedule and cleanup levels for the chosen remedy at the site as the closure standards for the staging pile in ~~into~~ the authorizing vehicle (~~e.g.~~ for example, the RAP). By providing that contaminated subsoils must be decontaminated "in a manner, and pursuant to a schedule, that the Director determines is necessary to protect human health and the environment," the Agency believes it is providing essential flexibility, while at the same time ensuring that the use of a staging pile does not increase contamination where it was located. The Agency believes that this design fulfills the goal of protection of human health and the environment in these unique circumstances.

M. What is the closure requirement for a staging pile located in an uncontaminated area? (§ 264.554(k))

Under today's rule (§ 264.554(k)), staging piles located in previously uncontaminated areas of the site must be closed ~~in accordance with~~ according to the closure requirement for waste piles in § 264.258(a) as well the closure performance standard of § 264.111 (or the requirements of § 265.258(a) and § 265.111) within 180 days after the expiration of the operating term of the staging pile (Part 265 is applicable to staging piles designated at interim status facilities). The Agency does not prefer the siting of staging piles in previously uncontaminated areas of the facility, yet acknowledges that site conditions may dictate such a siting (~~e.g.~~ for example, ~~in order~~ to site the staging pile outside of a floodplain or lagoon area). As stated above, the 180-day time limit for removal and decontamination is, in part, in response to comments made requesting the Agency to ensure that staging piles would indeed be temporary. It should be noted that the reference to "post-closure escape of hazardous wastes" in the § 264.111 and § 265.111 does not eliminate the need for clean closure of staging piles. As stated in § 264.258(a) and § 265.258(a), all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and leachate must be removed or decontaminated. The closure requirements that a staging pile located in a previously uncontaminated area of the site must fulfill should be included, according to currently applicable procedures, directly into the permit, closure plan or order in which the staging pile is designated to ensure a clear and enforceable outcome.

N. How ~~Can~~ may my existing permit (~~e.g.~~ for example, RAP), closure plan, or order be

modified to allow ~~the Use of~~ me to use a staging pile? (§ 264.554(l))

The proposal did not specifically address the process for designating a staging pile at an already permitted facility. EPA anticipates that staging piles will most often be designated as part of the approval of remedy selection at a site; and therefore, like selection of the remedy, staging piles will generally be approved using the Agency's permit modification procedures. To add certainty to this process, today's rule specifically requires that incorporation of a staging pile, or staging pile extension, into an existing permit be conducted ~~in accordance with~~ according to the Agency-initiated permit modification procedures (§ 270.41) or the Class 2 permit modification procedures under § 270.42. The Agency believes that a Class 2 designation is generally appropriate as it corresponds to the Class 2 permit modification necessary for the approval of temporary units, a close analogue to staging piles. If the Agency did not specify permit modification procedures in today's rule, the procedure outlined in § 270.42(d) would have been necessary, requiring a Class 3 modification unless the modification requestor could have provided information sufficient to support the requested classification. EPA believes that it is preferable to explicitly state that Class 2 procedures should be used to designate a staging pile or staging pile operating term extension, rather than default to § 270.42(d) procedures. Furthermore, the Class 3 modification procedures that would be required under § 270.42(d) are inappropriate for staging piles. Class 3 permit modification procedures are designed for changes that substantially alter the facility or its operations (§ 270.42(d)(2)(iii)). EPA believes the additional requirements of the Class 3 procedures would unnecessarily delay the process of designating a staging pile, diminishing the ability of staging piles to facilitate the remedial process. The subject of what

permit modification procedure to use when ~~designated~~ designating a staging pile did not surface in the comments on the proposal.

Other than through a traditional permit modification, a staging pile or staging pile operating term extension can also be designated through ~~the~~ modification of a RAP, closure plan, or order. As finalized by today's rule, RAPs are a new type of permit in which staging piles can be approved. ~~Staging piles can be approved under a RAP as finalized by today's rule in Part 270. As defined in the staging pile regulation at § 264.554(l)(2), modification of a RAP to incorporate a staging pile or staging pile operating term extension must occur according to the RAP modification requirements under § 270.91. The Agency believes that it is reasonable to use the RAP modification procedures in this manner since a RAP is a form of a permit and~~ Because traditional permit modification procedures are available when incorporating a staging pile or staging pile operating term extension into a traditional RCRA permit, EPA also believes it is reasonable to allow staging piles and staging pile operating term extensions, designated through a RAP, to be modified through RAP modification procedures. ~~for designation of a staging pile or operating term extension.~~ Therefore, as stated in the staging pile regulations at § 264.554(l)(2), "[t]o modify a RAP to incorporate a staging pile or staging pile operating term extension, you must comply with the RAP modification requirements under §§ 270.170 and 270.175." Although this language was not used in the proposed remediation pile regulation, it is an outgrowth of the RAP section of the proposal to ~~have~~ use the RAP modification procedures to incorporate staging piles or staging pile operating term extensions, similar to the way traditional permit modification procedures would be used~~employed in this manner~~.

In addition, modification of a closure plan to incorporate a staging pile or staging pile

operating term extension should proceed according to the requirements of § 264.112(c) at permitted facilities or the requirements of § 265.112(c) at interim status facilities. As discussed in the *"How is a Staging Pile Designated?"* section of today's preamble, the closure plan is an additional mechanism by which a staging pile can be designated. In keeping with the use of closure plans, the Agency believes that the use of the established closure plan modification procedures cited above is reasonable.

Finally, modification of an order to incorporate a staging pile or staging pile operating term extension must occur ~~in accordance with~~ according to the terms of the order and ~~pursuant to~~ the applicable ~~EPA procedures at~~ provisions of § 270.72(a)(5) or (b)(5). Any ~~such~~ inclusion will be governed by the standards promulgated today and, as noted below, the Agency's policy on public participation and corrective action orders should be followed.

The Agency received no comments on the proposal regarding the use of these, or any other, modification procedures to designate a staging pile or staging pile operating term extension.

O. Is information about the staging pile available to the public? (§ 264.554(m))

Section 264.554(m) requires the Director to document the rationale for designating a staging pile or operating term extension for a staging pile and to explain the basis for ~~such~~ the designation. The rationale for ~~such~~ these decisions should be incorporated as part of the Statement of Basis in a permit, closure plan or order modification. Documentation of staging pile decisions is analogous to the documentation the Agency currently makes to support the selection

of a remedy. Therefore, if a staging pile is incorporated as part of a final remedy, ~~such~~ this ~~an~~ explanation would be incorporated into the Statement of Basis for the remedy under a permit modification, closure plan or under an order. The staging pile rationale, as determined by the Director, will be available to the public through the appropriate public participation process. This requirement was not included in the proposal, but is intended simply to clarify and emphasize that staging pile decisions must be documented and explained as part of the existing notice and comment procedures for orders, permits, and closure plans. EPA believes that documenting the designation rationale is necessary to ensure that the public has access to information relevant to the designation of a staging pile which is both substantial and clear. The Agency believes that including regulatory language to this effect is in keeping with EPA policy with regard to the importance of meaningful public participation.[24]

Public participation during the staging pile designation process, ~~where~~ when implemented through the traditional (non-RAP) permit process, will proceed as prescribed in the Class 2, or Agency initiated, permit modification procedures. If the staging pile is designated in an order, it is the Agency's current policy that the order provide a level of public participation and comment comparable to that provided for in a permit modification (see RCRA Public Participation Manual, Chapter 4; and ~~the May 1, 1996,~~ "Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities; Proposed Rule," ~~pages~~ 61 FR 19432; (19453-19454)(May 1, 1996)). Since a staging pile has been designated as a Class 2 permit modification, these procedures should be used for public participation under an order. Documentation should

[24] For more information see the September 1996 RCRA Public Participation Manual, Chapter 4, EPA530-R-96-007.

be made available to the public through the order approval or order modification process.

P. What is the relationship between staging piles, Corrective Action Management Units, and the Area of Contamination policy?

The CAMU rule provides flexibility to EPA and implementing States to specify site-specific design, operating, and closure/post closure requirements for units used for land-based ~~temporary~~ storage, or for treatment of wastes that are generated during cleanup at a RCRA facility. The CAMU regulations also specify requirements for units that are used as long-term repositories for cleanup wastes. The proposed remediation piles were intended to replace, to some extent, the flexibility that would be lost if ~~CAMUs were~~ the CAMU rule was withdrawn and the use of CAMUs was no longer available. However, as discussed more fully above, the Agency believes that, although CAMUs are retained in today's rule, staging piles will be a useful part of a remedial strategy in cases where ~~CAMUs and temporary units may be inappropriate~~ waste is temporarily staged during remediation.

The staging piles provisions in today's rule will not affect current implementation of the ~~Area of Contamination (~~AOC~~)~~ policy. The AOC policy is an interpretation of the statutory RCRA term, "land disposal" (section 3004(k)). The AOC policy, first elucidated in the March 8, 1990 "National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 55 FR 8758-8760)," equates ~~certain~~ dispersed areas of contamination with RCRA landfills, and clarifies that hazardous wastes may be moved within the ~~areas of contamination~~ AOC without triggering LDRs

~~land disposal restrictions~~.[25] The Agency anticipates that staging piles will aid in situations in which the AOC policy does not apply. For example, a staging pile will be a valuable option in cases where a site has non-contiguous areas of contaminated soil, and where waste is being staged in a pile within one of the areas prior to further management. ~~and neither temporary units nor CAMUs are considered suitable management alternatives.~~ A staging pile will allow for consolidation of remediation waste into the pile without triggering RCRA LDRs ~~or MTRs~~. ~~Furthermore, if the extent of contamination, and thereby the extent of the AOC, is unknown a staging pile would provide an appropriate unit for consolidation and accumulation of remediation waste.~~ In cases where ~~an~~ a facility owner/operator would like to consolidate remediation waste within one area of contamination, this can be accomplished under the AOC policy, and therefore a staging pile would not be necessary.

[25] For more information consult the March 13, 1996 Memorandum: "Use of the Area of Contamination (AOC) Concept During RCRA Cleanups," from Michael Shapiro, Director Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement to RCRA Branch Chiefs and CERCLA Regional Managers.

VIII. Corrective Action Management Units (CAMUs) (§ 264.552)

This final rule retains the regulations for Corrective Action Management Units (CAMUs) promulgated on February 16, 1993 at section 264.552 (*see* 58 FR 8658).

The CAMU regulations allow EPA to impose site-specific standards for on-site units used to manage remediation wastes. As discussed in the preamble of that final rule, the CAMU regulations were adopted by EPA to provide remedial decision-makers with flexibility to expedite and improve remedial decisions by removing barriers to cleanup created by RCRA hazardous waste requirements -- specifically, the ~~land disposal restrictions~~ LDRs in Part 268 ~~(LDRs)~~ and the ~~minimum technology requirements~~ MTRs in Parts 264 and 265 applicable to land-based units ~~(MTRs)~~. As is discussed in ~~that~~ the preamble to the CAMU rule, the Agency believed (and still believes) that these Subtitle C requirements, when applied to remediation wastes, can act as a disincentive to more protective remedies, and can limit the flexibility of a regulatory decision maker in choosing the most practicable remedy at a specific site (*see* 58 FR 8658 at 8660).

Under the final CAMU regulations, LDRs do not apply to CAMUs because placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous waste, and MTRs do not apply because consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to MTRs (*see* 58 FR 8658 at 8661). The purpose of the CAMU regulations is to provide for more and improved cleanup of wastes, thus, providing increased protection of human health and the environment (*see* 58 FR 8658 at 8659).

While the CAMU regulations provided some flexibility to address the problems described above, the April 29, 1996 HWIR-media proposal was intended to be a more comprehensive response to the problems ~~in~~ faced when applying traditional RCRA Subtitle C standards to the

management of remediation wastes. In developing ~~that~~ the HWIR-media proposal, EPA evaluated the CAMU regulations in the context of the proposed provisions and recognized that the proposed revisions to Part 269 in ~~that~~ the HWIR-media rule, if promulgated, would provide flexibility similar to that provided by the CAMU regulations. EPA considered that the CAMU regulations might not be necessary if the HWIR-media proposal was promulgated, and thus the Agency proposed to withdraw the CAMU regulations if the proposed revisions to Part 269 were promulgated. The Agency noted in that preamble, however, that it did not intend to withdraw the CAMU regulations without, at the same time, substituting one of the two major options proposed in the HWIR-media proposal in its stead. The preamble of the proposed HWIR-media rule made clear that the Agency believed the CAMU regulations provided needed flexibility to remediation sites, and that the Agency intended to withdraw the CAMU regulations only if the site-specific flexibility provided in the CAMU rule would be preserved by the final HWIR-media rule (*see* 61 FR 18780 at 18829).

When EPA promulgated the CAMU final regulations in 1993, the Agency explained that, in implementing CAMUs, the Agency ~~like CERCLA, the CAMU program~~ would have a preference for "treatment-based remedies" and that "long-term reliability and protectiveness of remedial activities is directly tied to effective treatment of wastes that pose future release threats" (*see* 58 FR 8658 at 8670). In retaining the CAMU regulations, EPA does not alter that long-standing position and further notes that it is consistent with EPA's coordination and "principle of parity" between RCRA and CERCLA cleanup activities (*see* Memorandum from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA Policy Managers, September 24, 1996, entitled "Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities").

EPA considers the CAMU requirements, and in particular section 264.552(c)(6), as the functional equivalents of CERCLA's expectation that treatment should be used, whenever practicable, to address principal threats posed by a site (*see* 40 CFR 300.430(a)(1)(iii)(A)). EPA continues to believe that the implementation of the CAMU regulations, as described above, enhances protection of human health and the environment.

While EPA recognized that the proposed HWIR-media rule would have provided flexibility similar to that provided by the CAMU regulations, EPA also recognized that the proposed rule applied to a more limited spectrum of waste -- the proposed rule covered only contaminated media, whereas the CAMU regulations allowed all types of cleanup wastes to be managed. Thus, when it proposed to withdraw the CAMU regulations, the Agency also requested comment on what benefits might accrue if the CAMU rule were retained, and on what the ramifications might be if the final rule failed to provide the degree of relief that the CAMU rule has provided.

A majority of commenters favored the retention of the CAMU regulations. In many cases, commenters favored the retention of the CAMU regulations, even if EPA promulgated extensive regulatory reforms in this final rule. (Two commenters voiced their support for withdrawal of the CAMU rules, but did not explain their specific objections). Many commenters argued that EPA had failed to articulate a persuasive rationale for removing the CAMU regulations.

Many commenters on the proposal to withdraw the CAMU regulations believed that the CAMU regulations are important and should be retained because the proposed HWIR-media rule would have been limited to contaminated media. Commenters pointed out that contaminated debris, remediation sludges, and other waste generated as part of corrective action activities

would not qualify for any site-specific flexibility that might be provided by the final HWIR-media rule. Without the CAMU regulations, commenters believed, the site decision makers would lose a large amount of flexibility (~~i.e.~~ that is, LDR/MTR relief). One commenter pointed out that, because the HWIR-media proposal would only have applied to contaminated media, withdrawing the CAMU regulations would create a disincentive to remediation of non-media wastes. EPA agrees with these commenters.

This final rule does not include the extent of additional flexibility for remediation wastes that EPA anticipated when it proposed to withdraw the CAMU provisions. As is discussed in section II of this preamble, either the Bright Line or the Unitary approach of the proposed rule would have exempted certain remediation wastes from Subtitle C requirements (such as LDRs and MTRs), and subjected them, instead, to site-specific requirements. Neither of those options is promulgated in this final rule; thus, this type of flexibility is currently available only to remediation wastes managed in CAMUs. EPA believes this flexibility is vital to remove impediments to cleanup imposed by certain Subtitle C requirements. ~~EPA, for the reasons discussed above,~~ For these reasons, EPA is retaining the CAMU regulations in this final rule.

Since the promulgation of the CAMU regulations, just more than 30 CAMUs have been approved by the Agency. Though this small number might, on its face, appear to indicate that CAMUs have not proved useful to the regulated community, EPA believes, and commenters on the proposed HWIR-media rule verified, that this number is misleadingly low. EPA believes, and again commenters verified, that litigation on the CAMU regulations[26] has resulted in uncertainty

[26] On May 14, 1993, a petition for review of the final CAMU rule was filed with the U.S. Court of Appeals for the District of Columbia Circuit (*see* Environmental Defense Fund v. EPA No. 93-1316 (D.C. Cir.)). Petitioners challenged both the legal and policy basis for the final CAMU regulations. On October 27, 1994, the

about the future of CAMUs and, consequently, ~~provided~~ provides a disincentive to their use. Thus, despite the low number of CAMUs approved to date, EPA continues to believe that CAMUs provide a valuable tool to promote more and better cleanup of remediation wastes.[27] In fact, EPA expects that the use of CAMUs will increase as more corrective action sites move to the remedy selection phase, and the Agency strongly encourages States who are the major implementers of the corrective action program, to adopt and take advantage of this mechanism for cleanup.

IX. Dredged Material Exclusion (§ 261.4(g))

A. What is the dredged material exclusion?

Today's final rule contains an exclusion from the definition of hazardous waste for dredged material subject to a permit that has been issued under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (CWA) or under Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA, also known as the Ocean Dumping Act).[28] EPA proposed this change ~~to RCRA~~ to reduce potential overlaps between the CWA or MPRSA and RCRA regulation of dredged material disposal. At

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litigation was stayed pending EPA's publication of a final HWIR-media rule, to allow parties to determine whether the final rule would resolve issues raised in the petition for review.

[27] The October 27, 1994 stay of the CAMU litigation provided that within 91 days after the final HWIR-media rule is published in the *Federal Register*, the parties will inform the court whether they intend to dismiss the petitions for review, enter into settlement discussions, or proceed with the litigation. Thus, the litigation should be resolved in the near future, thereby removing the uncertainty surrounding implementation of the CAMU regulations.

[28] "Permit" also includes the administrative equivalent of a CWA or MPRSA permit for U.S. Army Corps of Engineers' civil works projects.

present, if dredged material proposed for disposal in the aquatic environment is contaminated or suspected of being contaminated with hazardous waste, the potential application of both RCRA Subtitle C regulations and dredged material regulations under CWA or MPRSA complicates efficient assessment and management of dredged material. Today's rule eliminates the overlap of RCRA Subtitle C with the CWA and MPRSA programs by excluding dredged material managed under a CWA or MPRSA permit from RCRA Subtitle C, while ensuring an accurate and environmentally sound evaluation of any potential impacts to the aquatic environment. This exclusion will not alter existing practice significantly, but it clarifies regulatory roles within EPA in an effort to avoid duplication of administrative efforts and is authorized under RCRA Section 1006.

The U.S. Army Corps of Engineers ("Corps") and other entities must dredge large volumes of sediment and other materials ~~in order~~ to maintain navigable waterways, ports and marinas. Dredged material can be mechanically or hydraulically dredged, and disposed of by barges or pipelines into river channels, lakes, and estuaries. Of the total amount of dredged material excavated, approximately one-fifth is disposed of in the ocean at designated sites in accordance with Section 103 of the MPRSA. Most of the remaining dredged material is discharged into waters of the United States, either in open water, at confined disposal facilities (CDFs), or for beneficial uses, which are all regulated under the ~~Clean Water Act~~ CWA. Any discharge of dredged material that occurs in upland areas and has return flow to waters of the United States is regulated under the ~~Clean Water Act~~ CWA. However, ~~in the event that~~ if upland-disposed dredged material were to have no return flow to waters of the United States, as defined by CWA Section 404, that dredged material would not be regulated under the MPRSA or

CWA, and is not, therefore, subject to the exclusion under today's rule.[29]

B. Regulation of dredged material under CWA and MPRSA

Section 404 of the CWA establishes a permit program to regulate the discharge of dredged material into waters of the United States that is administered by the ~~U. S. Army Corps of Engineers~~ Corps and EPA. Proposed discharges must comply with the environmental criteria provided in 40 CFR Part 230 ~~in order~~ to be authorized by a CWA 404 permit. The EPA and Corps regulations under Section 404 define dredged material as "material that is excavated or dredged from waters of the United States." In addition to such discharges as open water disposal from a barge, the Section 404 regulations specifically identify the runoff or return flow from a contained land or water disposal area into waters of the United States as a discharge of dredged material. In most cases, this type of discharge occurs from a weir and outfall pipe to drain water from a confined disposal facility, including the water entrained with the solid portion of the dredged material discharged at the site and from rainwater runoff.

The MPRSA regulates the management of material, including dredged material, that will be dumped into ocean waters. Section 102 of the MPRSA requires that EPA, in consultation with the Corps, develop environmental criteria for reviewing and evaluating applications for ocean dumping permits. Section 103 of the MPRSA assigns to the Corps the responsibility for authorizing the ocean dumping of dredged material, subject to EPA review and concurrence. In

[29] Ground water flow is not considered return flow under CWA Section 404 unless there is a "direct hydrogeological connection" to a surface water body.

evaluating proposed ocean dumping activities, the Corps is required to determine whether ~~such~~ these proposals comply with EPA's ocean dumping criteria (40 CFR Parts 220-228).

C. Dredged material and RCRA applicability

RCRA ~~(42 U.S.C. 6901 et seq.)~~ regulates the management of hazardous wastes at treatment, storage, and disposal facilities (TSDFs). Hazardous wastes are a subset of solid wastes. A solid waste is considered hazardous for regulatory purposes if it is listed as hazardous in RCRA regulations or exhibits any of four hazardous waste characteristics: ignitability, corrosivity, reactivity, or toxicity. Dredged material could trigger RCRA's Subtitle C requirements by exhibiting any of the four characteristics or by containing a listed hazardous waste. Environmental media (such as the sediments which make up dredged material) is not ~~of~~ itself waste, but is sometimes contaminated with hazardous waste and must be managed as a hazardous waste when it exhibits a characteristic or "contains" a listed waste. ~~Such~~ These media would be subject to the RCRA requirements applicable to the contaminated waste. As a practical matter, naturally occurring sediments will not normally be associated with any specific industrial waste stream, so as to "contain" listed waste. Consequently, the most likely means by which dredged sediments could become subject to RCRA Subtitle C regulation is by failing one of the tests for characteristic hazardous waste. Given the nature of sediments, they would be most likely to become subject to RCRA Subtitle C if they fail toxicity testing (~~i.e.~~ that is, Toxicity Characteristic Leaching Procedure, or TCLP). In fact, dredged sediments from navigational dredging projects very rarely, if ever, fail TCLP tests. In all but a very small number of cases,

RCRA has not been applied in practice to proposed discharges of dredged material. Nevertheless, as asserted by the commenters, the potential applicability of RCRA Subtitle C requirements has been a concern at many dredging operations.

The Agency is confident that today's exclusion will promote efficient handling of dredged material since future use of the TCLP will not be necessary for dredged material subject to a permit issued under CWA Section 404 or MPRSA Section 103. Specifically, today's rule will eliminate the unnecessary expense and effort, currently borne by the Corps and other entities, of applying the TCLP to large volumes of dredged material. ~~Instead, the~~ The Corps and other entities typically apply testing procedures under CWA and MPRSA that are better suited to the chemical and biological evaluation of dredged material disposed of in the aquatic environment, where the vast majority of dredged material is managed. These tests are specifically designed to evaluate effects such as the potential contaminant-related impacts associated with the discharge of dredged material into oceans and waterways of the United States. Thus it is appropriate to assess and manage dredged material under the aquatic testing and management protocols developed by the Corps and EPA under the MPRSA and CWA.

D. Determination of regulatory jurisdiction

Today's rule establishes an integrated approach to the regulation of dredged material disposal that will avoid duplicative regulatory processes while ensuring an accurate, appropriate, and environmentally sound evaluation of potential impacts to the environment. This approach is authorized under Section 1006(b) of RCRA, which states that "the Administrator ~~* * *~~. . . shall

avoid duplication, to the maximum extent practicable, with the appropriate provisions of ~~* * *~~. . . the Federal Water Pollution Control Act (CWA), ~~* * *~~. . . the Marine Protection, Research and Sanctuaries Act, * * *, and such other Acts of Congress as grant regulatory authority to the Administrator." Section 1006(b) of RCRA calls for the provisions of RCRA to be integrated with other statutes, including the CWA and the MPRSA, to avoid duplication when ~~such~~ the integration "can be done in a manner consistent with the goals and policies expressed" in RCRA and the other Acts. Applying the RCRA Subtitle C program together with the CWA and MPRSA permitting programs ~~could~~ can be redundant~~,~~ and unduly burdensome, and may cause unnecessary procedural difficulties (~~e.g.~~ for example, by requiring duplicate permit applications and procedures). It is also possible that the duplicative nature of the programs could in fact increase environmental risks by causing delays in proper disposal. The Agency believes that today's rule is appropriate and consistent with the goals and policies in each of these statutes.

The Agency believes that the CWA and MPRSA permit programs protect human health and the environment from the consequences of dredged material disposal to an extent that is at least as protective as ~~the protection~~ the ~~offered by~~ RCRA Subtitle C program ~~requirements~~. These programs incorporate appropriate biological and chemical assessments to evaluate potential impacts on water column and benthic organisms, and the potential for human health impacts caused by food chain transfer of contaminants. As improved assessment methods are developed, they can be incorporated into these procedures. The programs also make available appropriate control measures (~~e.g.~~ for example, 40 CFR 230.72) for addressing contamination in each of the relevant pathways.

The Agency believes that RCRA Subtitle C coverage of dredged material disposal in the

aquatic environment, whether or not this disposal is considered to be "land disposal" under RCRA, is duplicative and unnecessary when considered alongside the CWA and MPRSA coverage of these activities. The overriding goal of each of the three statutory programs is to protect human health and the environment, and the CWA and MPRSA programs achieve this goal appropriately by addressing the proposed aquatic disposal of dredged material.

The exclusion also applies in the case of a Corps civil works project which receives the administrative equivalent of a CWA or MPRSA permit, as provided for in Corps regulations. This regulatory language refers to the fact that the Corps does not process and issue permits for its own activities, but authorizes its own discharges of dredged or fill material by applying the same applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the Section 404(b)(1) guidelines or MPRSA criteria. EPA has the authority to develop environmental guidelines and the authority to prohibit or conduct further review of a proposed discharge by the Corps, in the same manner as it can with a private permit applicant. Thus, the exclusion in today's rule includes CWA and MPRSA permits, as well as their administrative equivalents in the case of Corps civil works projects.

E. Clarification of future practice

With the promulgation of today's rule, the regulation of dredged material will generally proceed in one of the following two ways, with the vast majority of activities expected to fall under the first example:

1. If the dredged material is subject to a permit that has been issued under CWA Section 404 or MPRSA Section 103, RCRA Subtitle C requirements do not apply.

2. If the dredged material disposal is not subject to a CWA Section 404 or MPRSA Section 103 permit, RCRA Subtitle C requirements may apply. (For example, if dredged material were to be disposed in upland facilities with no runoff or return flow to waters of the United States, this material would not be under the jurisdiction of the CWA or MPRSA and therefore would be subject to RCRA Subtitle C if it meets the definition of a RCRA hazardous waste.)

For dredged material covered by a CWA or MPRSA permit, the combination of statute, Federal regulations, and Regional guidance, along with the testing and management protocols that have been developed jointly by EPA and the Corps, ~~of Engineers~~ will be adequate to address potential contaminant-related impacts in both ocean and inland waters. Examples of the existing testing and management protocols include: Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. - Testing Manual (EPA-823-B-98-004) and Evaluation of Dredged Material Proposed for Ocean Dumping - Testing Manual (EPA-503-B-91-001), which contain current procedures on implementing the dredged material testing requirements under the CWA and MPRSA respectively. The manuals contain tiered evaluation systems that include, as appropriate: physical analysis of sediment; chemical analysis of sediment, water, and tissue; bioassay tests; and bioaccumulation tests of contaminant impacts. EPA believes that CWA and MPRSA permits coupled with these testing manuals and relevant Regional guidance will ensure

the protective management and discharge of dredged material.

F. Comments on the dredged material exclusion

Comments from 18 sources mentioned the dredged material exclusion. These sources included various industries and trade groups, as well as federal and state agencies. These comments are included in the record and are available for review in the RCRA docket. Commenters generally supported the exclusion of dredged material from RCRA Subtitle C regulation when the discharge is covered by a permit issued under the CWA or MPRSA. There was also general concurrence among commenters that this exclusion would avoid current unnecessary and duplicative regulation under RCRA. The proposed dredged material exclusion received only one comment that could be considered adverse. The comment was from a state environmental agency and addressed only a portion of the exclusion. The commenter stated that dredged material disposed upland should not be excluded from RCRA Subtitle C requirements. EPA agrees with this concern when there would be no return flow to waters of the United States since, under these circumstances, CWA Section 404 or MPRSA 103 permits would not be issued. However, for the reasons provided in today's rule, EPA does not agree with the commenter in cases where there is return flow to waters of the United States and the dredged material is subject to a permit under CWA Section 404 or MPRSA Section 103. Moreover, the commenter provides no rationale as to why dredged material disposed upland under a CWA Section 404 or MPRSA Section 103 permit should not be excluded from the definition of hazardous waste. Therefore, EPA has finalized the rule as proposed. In addition to this comment, several commenters raised

further issues that are outlined and discussed below.

G. Dredged material as a solid waste

The Agency proposed that the dredged material exclusion apply only to the hazardous waste requirements of RCRA Subtitle C and not to the solid waste requirements of RCRA Subtitle D. Today's final rule adopts this approach as proposed.

Some commenters noted that the context and wording of the proposed dredged material exclusion implied that all dredged material is solid waste. They were concerned that excluding dredged material from the definition of hazardous waste could be interpreted to mean that all dredged material is inherently a hazardous waste, and consequently, also a solid waste. They believe that is not the case, and asked EPA to clarify this matter in the final rule.

EPA agrees with these comments. Nothing in the proposal or in today's final rule is meant to imply that dredged material is always a solid waste. Dredged material, which is media, may or may not contain a RCRA solid or hazardous waste. Dredged material should not be assumed, a priori, to contain a solid waste and today's rule does not expand the scope of dredged material regulation under RCRA.

In cases where dredged material may be both a solid and a hazardous waste, today's rule ~~exempts~~ excludes these materials from the hazardous waste requirements only. Two commenters requested that the dredged material exclusion extend to all aspects of RCRA (~~i.e.~~ that is, that dredged material be excluded not only from hazardous waste requirements, but also from solid waste requirements). EPA has not adopted this suggestion. While EPA believes that excluding

dredged sediments from Subtitle C regulation is appropriate, the Agency is not persuaded that these sediments should be excluded from all RCRA jurisdiction. It would be inappropriate to extend the exclusion to Subtitle D ~~since~~ because, in certain circumstances, ~~such a rule an~~ this exclusion would remove the ability of states to exercise authority over dredged material under their RCRA Subtitle D programs. (For example, in some States, State authorities preclude State regulations from being more stringent than Federal regulations.) ~~EPA believes that altering the states' ability to regulate dredged material is at odds with the statutory intent of RCRA Subtitle D.~~ Also, because there is no federal permit program for Subtitle D, state and local authorities have well-established regulatory discretion ~~over the Subtitle D program~~ in the non-hazardous waste arena, which the Agency does not wish to alter at this time. Consequently, today's rule does not alter the existing abilities of States and local authorities to regulate dredged material as a solid waste under RCRA.

Furthermore, although certain dredged materials will no longer be considered hazardous wastes under today's rule, this exclusion does not affect whether dredged materials are considered solid wastes for the purposes of RCRA section 7003. As advanced in the proposal, EPA may take action under RCRA Section 7003 to address the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste that may present an imminent ~~or~~ and substantial endangerment to human health or the environment. This authority remains intact, regardless of the Agency's decision to exclude dredged materials from RCRA's hazardous waste provisions. ~~Thus, today's rule does not affect whether dredged material is a solid waste for purposes of section 7003.~~ Thus, this rule does not diminish in any way the Administrator's authority to take action under section 7003 in connection with dredged material. EPA believes

this authority provides an important backstop to the regulatory authorities of the CWA and MPRSA. Emergency powers under these other two statutes are different from and not co-extensive with RCRA § 7003 authority. Furthermore, many States have comparable authorities over non-hazardous waste, which EPA does not wish to undercut.

In sum, the status of dredged material as potentially a solid waste under RCRA is unchanged by today's rule. Where dredged material is (or contains) both a solid and a hazardous waste and is subject to a permit that has been issued under CWA Section 404 or MPRSA Section 103, today's rule excludes it from RCRA's hazardous waste requirements, but not from solid waste requirements.

H. Clarification of terms related to dredged and fill material

Two commenters stated that transferring the term "discharge of dredged material" from CWA Section 404 regulations into the dredged material exclusion regulation, as was done in the proposal, would complicate the exclusion unnecessarily. EPA agrees with these comments. The term "discharge of dredged material," which was incorporated into the proposed exclusion, is defined in 40 CFR 232.2 (and the Corps' 33 CFR 323.2) and includes descriptions of the scope of ~~such~~ these discharges. The definition also describes discharges that do not require a Section 404 permit. Confusion could have resulted, for example, over whether dredged sediments should be removed from RCRA regulation when they are within the scope of a Section 404 permit exclusion. The references to this term and its definition have been removed from the rule to avoid confusion and misinterpretation, and only the term "dredged material" (which is defined in

40 CFR 232.2 as "material that is excavated or dredged from the waters of the United States") is used in the final rule.

Similarly, EPA stated that the exclusion did not address "fill material". The Agency's goal ~~was~~ is to ensure that upland-derived fill material ~~was~~ is not eligible for the exclusion, but the language in the proposal did not distinguish between dredged material used as fill and fill material not excavated from waters of the U.S. The "fill material" that is not included in the exclusion is any material that does not meet the definition of dredged material. For example, dredged material can be used as fill under a CWA 404 permit for beneficial purposes, such as the creation of an underwater berm for erosion control. EPA sees no reason to differentiate between dredged material that is discharged for disposal and dredged material that is used as fill, as long as both are subject to the CWA or MPRSA dredged material permitting requirements.

As a result, as in the case of the term "discharge of dredged material," "discharge of fill material" and "fill material" are not terms pertinent to the dredged material exclusion and therefore are not included in today's regulatory language.

I. Normal dredging operations and the exclusion

Two commenters recommended extending the exclusion to normal dredging operations for navigation or flood control that are subject to some form of federal regulation other than CWA or MPRSA permitting, in particular when the dredged material would be disposed in upland facilities with no return flow. EPA was asked to ~~read~~ interpret RCRA Section 1006(b) expansively to avoid regulatory duplication with the Rivers and Harbors Act of 1899 (RHA, 33 U.S.C. §403)

which regulates normal dredging operations. However, Section 1006(b) of RCRA requires EPA to avoid duplication with Acts of Congress that grant regulatory authority to the Administrator, and RHA does not grant ~~any~~ regulatory authority to the Administrator. Furthermore, the proposed rule's exclusion for dredged material was premised only on the applicability of CWA or MPRSA permitting, and the proposal did not request comments on expanding the exclusion from RCRA Subtitle C for dredged material that is not subject to CWA or MPRSA permits. Therefore, the Agency will limit the scope of the exclusion to dredged material subject to a permit that has been issued under CWA Section 404 or MPRSA Section 103, as proposed.

J. The exclusion and nationwide permits

One commenter asked whether the proposed exclusion would not only apply to project-specific individual permits issued by the Corps, but also to general permits.[30] The proposed rule and the preamble implied to this commenter that the scope of the exclusion includes only individually-issued permits. Although under today's rule the exclusion applies to any dredged material subject to a Section 404 permit and, therefore, would technically extend to Corps general permits (those which allow for certain dredging activities without requiring an individual application), it is important to note that it is very unlikely that any dredged material suspected of being contaminated would be authorized under a general permit. General permits may not authorize discharges where contaminant-related impacts are expected to be more than minimal,

[30] The Agency notes that there are no nationwide permits under MPRSA that are applicable to dredged material, so the following discussion is in the context of CWA Section 404.

evaluated separately, as well as cumulatively. However, in the unlikely event that ~~such~~ these discharges are authorized under a general permit, both the Corps and the appropriate state regulatory agency retain the authority to impose individual permit requirements or deny a permit to avoid impacts of concern. Therefore, EPA believes that it is appropriate, and in keeping with the logic of the proposal, to retain dredged material managed under CWA Section 404 general permits within the exclusion from RCRA Subtitle C.

X. State Authority (§ 271.1(j))

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA Subtitle C program within the State. Following authorization, EPA retains independent enforcement authority under sections 3008, 3013, and 7003 of RCRA to initiate an action, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program ~~in lieu~~ instead of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. Although the States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA is directed to carry out HSWA requirements and prohibitions in authorized States, including the issuance of permits implementing those requirements, until the State is granted authorization to do so.

Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States can, but do not have to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent. Less stringent regulations, both HSWA and non-HSWA, do not go into effect in authorized States until those States adopt them and are authorized to implement them.

B. Effect on State Authorization

Today's rule is promulgated in part pursuant to non-HSWA authority, and in part pursuant to HSWA. Requirements applicable to Remedial Action Plans (RAPs) and the dredged material exclusion are promulgated pursuant to non-HSWA authority. Therefore, these requirements will become effective on the effective date of this rule only in those States without final authorization. They will become effective in States with final authorization once the State has amended its regulations and the amended regulations are authorized by EPA.

The requirements for staging piles are promulgated pursuant to HSWA. Specifically, as discussed in the proposal (see 61 FR 18830-31) the requirements relating to staging piles are based on an interpretation of RCRA sections 3004(k) and (o). (See below for detail regarding implementation in authorized States.) Also, the provisions exempting remediation waste only management sites from the requirements of RCRA section 3004(u), namely sections 264.1(j) and 264.101(d), are promulgated under HSWA authority. The Agency is adding these requirements to Table 1 in 271.1(j), which identifies rulemakings that are promulgated pursuant to HSWA.

As noted above, authorized States are only required to modify their program when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. The standards promulgated today (including those promulgated under HSWA

authority) are less stringent than the existing Federal standards. Therefore, States are not required to modify their programs to adopt today's rulemaking. However, EPA strongly encourages States to adopt the provisions promulgated today, as the Agency believes that they will increase the pace and efficiency of hazardous waste cleanups. The swift authorization of States that have adopted provisions equivalent to those promulgated today is a high priority for EPA.

Staging Piles

The implementation of the provisions regarding staging piles will vary, depending on the authorization status of a particular State. Although these provisions are promulgated under HSWA authority, they are less stringent than the existing Federal provisions, namely the Land Disposal Restrictions (LDR) and Minimum Technology Requirements (MTR) that apply to waste piles. Thus, if a State is authorized for the LDR and MTR provisions, EPA will not implement the provisions regarding staging piles in that State even where it is conducting a corrective action. In some cases, however, a State that has LDR and MTR authorization and has adopted the staging pile provision, but is not yet authorized for staging piles may be able to implement its staging pile provisions, if under State law it has a waiver authority comparable to the Federal authorities under RCRA section 7003 and CERCLA section 121(e). (A State's waiver authority is discussed further below.) If, prior to authorization for staging piles, the State exercises this authority in a way that is consistent with today's provisions regarding staging piles, EPA would not consider the State's program to be less stringent than the Federal program. These approaches should be used only to cover the transition period during which the State amends its regulations and obtains formal authorization for the staging pile provisions.

In those States that do not have authorization for the LDR and MTR rules, EPA is responsible for implementing the provisions regarding staging piles, since they are part of the Federal RCRA program operating in ~~such~~ these States. EPA would use the Federal procedures for the implementation of the staging pile. For example, if the facility at which the staging pile was to be located holds a RCRA permit, EPA would modify the HSWA portion of the permit using the Federal permit modification procedures. However, EPA will not implement the staging pile provisions if ~~such~~ this implementation is in conflict with a State's hazardous waste program. In some cases, States may have adopted the LDR or MTR provisions in their regulations, but may not have received authorization from EPA. Thus, these provisions may be effective under State law, preventing the implementation of the staging pile provisions. To address this situation, to the extent permitted by EPA regulations, EPA may modify its action so it is consistent with State law, or structure it to mirror existing State requirements which allow waiver of the authorized State LDR and MTR provisions. Alternately, the State may use an authority under its own laws to provide a waiver.

C. Authorization for Today's Rule

In today's rule (as described later in the preamble) EPA establishes streamlined procedures for authorizing States for routine or minor program revisions of RCRA requirements. Streamlined authorization procedures were a major feature of the HWIR-media proposal, as well as several other recent regulatory proposals, and they are a key feature of EPA's program to reinvent the RCRA State authorization process.

The specific substantive provisions of today's rule, however, are not eligible for these streamlined procedures. This is because of the complexities of today's rule. For these reasons

EPA disagrees with the several commenters who wanted the abbreviated authorization procedures promulgated today to apply to the authorization of the HWIR-media rule. At the same time, EPA is placing a high priority on authorization of States who seek to implement today's rule. The success of the regulatory reforms in today's rule depends on its rapid adoption by the program implementers, that is, the States. Furthermore, EPA intends to use its existing discretion under 40 CFR 271.21(b), to follow the streamlined procedure for the authorization of States which only adopt section 264.101(d) of today's rule. This provision eliminates section 264.101 facility-wide requirements from RCRA permits or RAPs issued to facilities not otherwise subject to facility-wide corrective action. The streamlined authorization procedure and EPA's existing discretion are discussed below.

Although today's HWIR-media rule is not eligible for the streamlined authorization procedures, EPA believes that in most cases, the authorization of States for this rule should be straightforward. Today's rule, for the most part, does not change the current regulatory standards for waste management, but merely streamlines procedures for a particular category of waste (~~i.e.~~ that is, remediation waste). Any State currently authorized to implement RCRA hazardous waste regulations, particularly those States authorized for the Land Disposal Restrictions program and for corrective action, should have little difficulty becoming authorized for today's rule, as long as it adopts a program that meets the minimum standards in today's rule.

EPA particularly emphasizes that in authorizing States for the RAP part of today's rule, it will not be judging the adequacy, the stringency, or the resources of State clean-up programs, as today's rule does not modify or alter in any way clean-up requirements, but simply streamlines the permitting process for management of hazardous remediation wastes.

EPA will be reviewing the State's regulations and program for managing hazardous remediation waste to determine whether they are equivalent to the standards promulgated in today's rule. If a State program is already authorized to regulate hazardous waste under the base RCRA program, there is every reason to presume it can adequately regulate that same waste under a RAP or in a staging pile. The main task for EPA will be to ensure that States, in providing relief for remediation waste, meet the national minimum standards. EPA anticipates that in most cases this will be a clear and simple standard for States to meet, and authorization will be correspondingly expedited.

EPA also emphasizes that State programs seeking authorization must be equivalent to (and no less stringent than) the program EPA will be administering under today's rule. State programs, however, do not need to be identical to the Federal program. EPA included considerable detail on procedural requirements in today's rule, because it will be implementing the rule in unauthorized States. Thus, the Agency needed to spell out permitting procedures, information requirements, and similar provisions explicitly and in detail. Although some States may choose to adopt these requirements verbatim or by reference, EPA expects that other States will prefer to establish different procedures--for example, for RAP issuance or revisions, appeal rights, computation of time periods, and similar requirements, analogous to the situation regarding 40 CFR Part 124 requirements (see sections 270.89, 270.93, and 270.95). EPA stresses that State programs would be eligible for authorization, as long as they comply with the statutory minimum in areas like public participation, their requirements apply equivalent (or more rigorous) procedures, they provide for adequate enforcement, and they meet the substantive standards of the Federal regulations.

D. Authorization of State Non-RCRA RAP Authorities

In some instances States may want to use, as RAPs (see section IV of today's preamble for further discussion), enforceable documents issued by a State program other than the State's authorized RCRA program. Enforceable documents containing hazardous remediation waste management requirements that are not specifically issued through EPA's or an authorized State's RCRA program are not considered to be RAPs (~~i.e.~~ this is, RCRA permits). Where a State wishes to use enforceable documents issued under authorities other than State RCRA authorities to implement hazardous waste remediation requirements, this will require specific authorization review to determine whether the State has the requisite implementation and enforcement authority, and the provisions are consistent and equivalent to those promulgated today. During the authorization process for this rule, the State should specifically identify the enforceable documents it intends to use as RAPs, as well as the State authorities under which they are issued ~~in order~~ to provide EPA with a basis for its authorization determination. If EPA approves the authorization, then the enforceable documents become a part of the RCRA program and the State will have the discretion to use such documents as RAPs. As part of RCRA, the RAP portion (~~i.e.~~ that is, hazardous remediation waste requirements and conditions) of the enforceable document is enforceable pursuant to the State RCRA enforcement authorities and by EPA pursuant to its independent RCRA enforcement authority.[31]

Elsewhere in this preamble, EPA discusses the appropriate level of public involvement in site cleanups, given the need for flexibility to do what makes sense in a given situation. Thus, States

[31] Nothing in either the State's authorized "enforceable document" or in the State's law can restrict EPA's independent authority to enforce the authorized RCRA program.

need to ensure in particular, that any enforceable documents to be used as RAPs will be developed through procedures that meet the public participation requirements of § 270.68; otherwise they would not meet the standards for authorization. Further, the authorities used to issue these documents must also ensure that hazardous waste is managed under the appropriate standards of the hazardous waste program.

As noted earlier, nothing in today's rule limits or expands the authorities States may already have to waive RCRA permit requirements, consistent with EPA's authority in section 7003 of RCRA or section 121(e) of CERCLA. RCRA section 7003 allows EPA to order response actions in the case of imminent and substantial endangerment to health or the environment, "notwithstanding any other provision in this Act." An authorized State may use a comparable authority to authorize activities consistent with today's rule. Similarly, where comparable authority exists under a State Superfund program, the State may use that authority. As explained in EPA's earlier guidance, the two preconditions to allowing the use of ~~such~~ this authority are that: "(1) the State has the authority under its own statutes or regulations to grant permit waivers, and (2) the State waiver authority is used in no less stringent a manner than allowed under Federal permit waiver authority, for example, § 7003 of RCRA or § 121(e) of CERCLA." (See the Memorandum, "RCRA Permit Requirements for State Superfund Actions", from J. Winston Porter to Regional Administrators, Region I-X (Nov. 16, 1987)(OSWER Dir. No. 9522.00-2).) A State cannot, however, waive applicable Federal requirements. Thus, if a State is not authorized to implement a portion of the RCRA program in that State, the exercise of the State's waiver authority does not waive the Federal portion of the RCRA requirements. Also, EPA recognizes that many States have enforcement authorities allowing them to compel corrective

action at interim status facilities comparable to EPA's section 3008(h) authority. States with appropriate regulatory and enforcement authority would be able to use ~~such~~ these authorities in the same way EPA uses its 3008(h) authority, for example, to approve the use of a staging pile outside the context of a RAP. As long as the authorized State acted in a way that was consistent with Federal requirements, its program would be considered as stringent as the Federal program.

XI. Abbreviated Authorization Procedures (§ 271.21(h))

EPA and States have recognized the need to improve the RCRA State authorization procedures for many years. For example, in the 1990 RCRA Implementation Study, the authorization process was identified as being too slow and cumbersome. In response to these longstanding concerns, the practices used by EPA and States have evolved over the years. The purpose of these attempts has been to make the authorization process operate more smoothly. Further, because Federal regulatory revisions promulgated under non-HSWA statutory authority do not go into effect until States have adopted them and received authorization, a more speedy authorization process will enhance environmental protection.

In several notices published during the past three years, EPA has proposed abbreviated authorization procedures intended to expedite the review and approval of revisions to authorized State programs. In the August 22, 1995, Land Disposal Restrictions (LDR) Phase IV proposal, EPA proposed a procedure (subsequently called Category 1) for authorizing minor or routine rules (see 60 FR 43654). This abbreviated procedure would require an application that was reduced in scope and composed of a certification from the State that its laws provide authority that is equivalent to and no less stringent than EPA's regulations, and a copy of those State

statutes and regulations. After a complete application was submitted, EPA would then conduct a speedy review, and within 60 days after receiving an acceptable application, finish its action by publishing a Federal Register notice. With this notice and the associated public comment period, EPA would provide notice to the public of authorization decisions in the same fashion as currently done. This procedure was proposed to apply to certain minor amendments to the LDR program that had become a routine part of the LDR program. EPA also requested comment on the future applicability of this procedure.

EPA modified this proposal in the January 25, 1996, LDR Phase IV supplemental proposal (see 61 FR 2338). Last, EPA proposed streamlined procedures for the authorization of more significant rules in the April 29, 1996, HWIR-media proposal (see 61 FR 18818). This proposed procedure was known as Category 2.

After carefully evaluating the comments received on these proposals, as well as the Agency's goal of speeding up the State authorization process, EPA has decided to promulgate abbreviated authorization procedures based on the procedures proposed in the August 22, 1995, LDR Phase IV notice. Thus, EPA is not promulgating the more extensive proposed Category 2 procedures and the modifications to the proposed Category 1 procedures outlined in the January 25, 1996 proposal. This preamble explains the details of today's abbreviated procedures, and discusses EPA's overall approach towards streamlining and improving the authorization process for all State authorization revisions.

A. Existing Authorization Process

During the past 15 years, EPA has frequently amended the Federal RCRA program by promulgating rulemakings to reflect statutory mandates, court decisions, and technical and

scientific progress. EPA Regions and States have worked together to incorporate these regulatory amendments into revised State hazardous waste programs. This has been accomplished through the State adoption of rules equivalent to the Federal rulemakings, and the subsequent authorization of States. The existing regulations regarding the revision of a State's authorized program are located in 40 CFR 271.21.

Authorization revision applications generally consist of a copy of the State regulations, a revised Attorney General's (AG) statement, a revised Program Description (PD), a revised Memorandum of Agreement (MOA), or ~~such~~ other documents ~~as~~ EPA determines to be necessary (see 40 CFR 271.21(b)(1)). This provision does provide EPA with flexibility regarding the content of authorization applications. However, all of these components are generally submitted to EPA because the State applications often cover Federal rulemakings promulgated during a period of one to several years and therefore address significant Federal rulemakings. This practice is based on provisions located in 40 CFR 271.21(e). These provisions set forth the concept of "clustering" rules, and established deadlines for State submission of applications. Because State applications address Federal rulemakings promulgated during a set period of time, it is common that these applications contain analogous State rules that are both very minor and quite significant.

Although the regulations in 271.21 contain only general provisions regarding the EPA review and approval process, over time EPA Regions and States have developed practices for the development and review of State applications that vary according to the content of the application, method of State adoption, and the individual approaches of State and EPA staff. Of course, all of these practices are based on the standards for review set forth in the RCRA statute,

other sections of 40 CFR part 271, and the content and nature of the individual applications. Typically, the State provides a draft of its application, including draft or proposed State regulations, to the EPA Region for review and comment. After the Region submits comments back to the State, the State addresses the comments, and prepares and sends a final application to the EPA Region for review, comment if necessary, and in most cases, approval through notice in the Federal Register as an immediate final rule (see 40 CFR 271.21(b)(3)).

The authorization revision process as implemented does not incorporate formal deadlines or time lines. Many factors have contributed to the duration of the entire process, which EPA and States have often characterized as being too lengthy. One factor is the size and complexity of many revision applications. Another factor is the time necessary for a State to conduct rulemakings to revise its regulations, and to put together a complete application. Allowing EPA review of draft or proposed State regulations may also lengthen the process, even though it is particularly recommended in cases where States find it difficult to amend regulations after they are first promulgated.

B. Summary of Comments on the August 22, 1995 Proposal

EPA did not receive any adverse comments regarding the abbreviated authorization procedures that were proposed in the August 22, 1995 notice. Some of these commenters wanted these procedures to apply to the authorization of States for all Federal RCRA rulemakings, and not just to rules that are minor in nature. Other commenters thought that the procedures were appropriate for the authorization of minor rules that would be promulgated in the future, or were already promulgated by EPA. One commenter maintained that the procedures should not be applied to authorizations involving rules that are significant, since the necessary

EPA review may involve State enforcement and technical capability.

C. Basis and Rationale for today's new procedures

EPA has determined that while the authorization processes that are currently employed may be appropriate for the authorization of significant changes to the RCRA program, a process that does not include all the possible components of the application, and that provides deadlines for certain actions is better suited for routine or minor changes. As discussed in the August 22, 1995 proposal, ~~such~~ routine or minor rulemakings are those EPA rulemakings that do not change the basic structure of the RCRA hazardous waste program, or expand the program into significant new areas or jurisdictions. For example, a new waste listing which amends 40 CFR part 261, a technical correction to a previously promulgated rulemaking, or a rulemaking that is part of a series of rulemakings where the basic regulatory authority has already been established (and remains largely the same), could be considered a minor or routine rulemaking and appropriate for the abbreviated authorization process.

As already discussed, these rules would have a limited impact on the implementation and scope of the RCRA program and therefore, the minor or routine rulemakings do not significantly expand or change the nature of existing State authorized regulatory authority. Further, ~~such~~ these rules have a negligible effect on the resources necessary to implement the RCRA program, and do not have an effect on the intergovernmental relationship between EPA and States. Thus, it is appropriate to have an abbreviated authorization process for minor or routine rules to be used by States that have already received authorization for the significant parts of the RCRA program that are being revised, since those States have demonstrated capability in both the administration and implementation of those aspects of the program.

Additionally, an abbreviated authorization process is appropriate since certain components of the normally submitted authorization application (such as the MOA and PD) are affected only rarely by minor or routine revisions. Rather, revisions to these components are usually required in the authorization revision application for a set of rules because of the presence of significant rulemakings, not the minor or routine rules. Likewise, much of the time and effort expended on reviewing and revising authorization applications is due to the extensive changes to the RCRA regulations caused by significant rulemakings.

Further, revisions to the PD or MOA should not be necessary because, as already mentioned above, the minor or routine rules to which today's new, abbreviated procedures apply do not have any significant impact on the States' capability to implement the RCRA program, and do not present any new issues for EPA-State coordination. Also, due to the nature of these minor or routine rules, they should not have an effect on State program consistency and the adequacy of a State's enforcement program. Thus, EPA believes that today's procedure will expedite the implementation of many minor or routine rulemakings, and will enable EPA Regions and States, including the State Attorney General's Office, to devote their resources towards efficient authorization of more significant rules.

EPA has always had the discretion to implement authorization procedures similar to those promulgated today without promulgating regulations. Section 271.21(b)(1) allows EPA to determine what documents are necessary in a revision application, according to the circumstances presented by each particular rule. Nonetheless, EPA believes that this codification of procedures is useful for two reasons. First, a codification will provide a consistent procedure for States and EPA to use when processing an application for minor or routine rules. Second, since these

procedures will be included in the CFR, all parties involved in the authorization process, including States and the general public, will be aware of this alternative procedure.

Section 3006(b) of RCRA establishes the legal standard for State program approval. As detailed below, the application required in today's procedure includes a certification that the State's regulations for which the State is seeking authorization are equivalent to the Federal regulations. EPA has concluded that this certification, coupled with the review EPA conducts on these minor or routine rules as part of the authorization process, will provide an adequate basis for EPA to make its required findings and grant approval of a program revision under 40 CFR part 271.

D. Rules listed in table 1 to 271.21 to which the abbreviated procedure applies

In new Table 1 to 40 CFR 271.21, EPA has listed the four rules, or parts of rules, for which the new abbreviated procedure may be used. Note that States are not required to use the new procedures in 40 CFR 271.21(h) when they seek authorization for these rules. These rules were proposed in the August 22, 1995, notice and include:

1) The Universal Treatment Standards (UTS) in §§ 268.40 and 268.48 that were promulgated in the Phase II LDR rule (see 59 FR 47982, September 19, 1994);

2) the Phase III LDR rule, (see 61 FR 15660, April 8, 1996) (note that only those parts of the proposed rule to which the abbreviated procedure applies were actually included in the final rule);

3) the LDR rule on wood preserving wastes (see 62 FR 26040, May 12, 1997); and

4) the Phase IV LDR rule (63 FR, 28556, May 26, 1998).

[Note: there are four rules listed in the table, although the August 22, 1995 proposal contained

only three. This is because the Phase IV LDR proposal was split up into two final rules.]

Today's HWIR-media final rule is not listed in Table 1 as explained earlier, the abbreviated authorization process would not be used for its authorization. EPA considers today's HWIR-media rule to be a significant rule because, for example, it provides for a new type of permit mechanism and a new type of waste management unit. Although EPA believes that today's rule will have many environmentally beneficial effects, it involves several complex regulatory concepts, and thus EPA believes the abbreviated procedures are not appropriate for its authorization.

In the future, as EPA proposes rulemakings under RCRA, EPA will also propose to list additional minor or routine rules in Table 1 to 40 CFR 271.21, to ensure that today's procedure can be used for their authorization. These future proposed additions to Table 1 will generally be in the same notice as the proposed minor or routine rule. This action was supported by commenters to the August 22, 1995 proposal. Once public comment is received on the proposed listing in Table 1, EPA will promulgate it as appropriate.

In the August 22, 1995 proposed rule, EPA discussed and requested comment on the rules a State must be authorized for ~~in order~~ to use the abbreviated process. In particular, EPA suggested that States should be authorized for the LDR Third Third rule (see 55 FR 22520, June 1, 1990) ~~in order~~ to use the new procedure for the LDR Phase II, III and IV rules, or the designated parts of them. Based on the comments, EPA has concluded that the proposed approach was reasonable. However, the prerequisite has been modified so that it is more generally applicable, and easier to understand and implement. Therefore, today's rule simply requires that States be authorized for the part of the program that the routine rule is amending. One example is a revision to an existing rule. Another example is a new waste listing, which

amends the list of hazardous wastes in 40 CFR part 261. This prerequisite requirement is located in 271.21(h)(5).

E. Use of Today's Abbreviated Procedure For The Authorization of Previously Promulgated Rules

In today's rule, EPA explicitly identifies four recent rules as subject to the abbreviated authorization procedures. However, EPA considers the development and review of an authorization application that contains only these four rules to be inefficient, and not justified by the administrative resources that EPA and States would expend to develop and review such a small application. This situation would render today's new procedures largely ineffective in accomplishing the goal of making the authorization process more efficient, considering that authorization applications generally cover a large number of Federal rulemakings, ranging in size from about 20 to 100 rules. Further, EPA does not believe that it should treat the authorization of minor or routine rules in a different manner based solely on when the rule was promulgated.

Section 271.21(b)(1) provides the Agency with the flexibility to tailor the contents of a State's application to revise its authorization. Thus, under this provision, EPA could require the same information that is required to be in the State application under the requirements in 271.21(h)(1). EPA also has the discretion to review authorization applications in the same manner as promulgated in today's abbreviated procedures. EPA has always had the ability to commit to an expedited review of State applications. For example, EPA has committed to conducting a speedy review of State applications for several recent rules, such as the Universal Waste rule.

Since today's procedure continues to meet the review requirements set forth in the RCRA statute and existing regulations, and EPA has discretion under 40 CFR 271.21(b)(1) to

appropriately tailor the authorization application requirements and review schedules, EPA intends to use the timetables and application requirements in today's procedure for previously promulgated rules, as long as those rules are minor or routine in nature and scope. To enable States and Regions to make speedy and proper decisions regarding which previously promulgated rules should be included in an authorization application that uses the abbreviated procedures, EPA is developing guidance. This guidance will identify those previous rulemakings which EPA considers to be minor or routine in nature. It will also identify those rules that are not minor or routine, and for which the abbreviated procedures would not be used. One example of such a rule is the boilers and industrial furnace rule, which establishes authority over a new and complex area. This guidance will take into account the criteria EPA will use to propose to list a new rule in Table 1, the considerations discussed in the section regarding basis and rationale in today's preamble, and EPA's previous experience in authorizing these existing rules. This guidance will also consider how EPA's checklist guidance treats these rules, since the guidance is widely used in those States that do not incorporate the Federal regulations by reference. Copies of the checklist guidance for all existing rules as well as other authorization related guidance are located on the Internet (at: http://www.epa.gov/epaoswer/hazwaste/state/index.htm). For example, many technical corrections to significant rules, which on their own would be considered minor, are included on the same checklist as the original major rule. EPA does not think that States which use the checklist guidance would separate out these technical corrections into a second application because doing so would be difficult and inefficient. Thus, these corrections would not be listed as minor in the guidance. (However, if a State had already been authorized for the major rule, and would prefer to seek an abbreviated process for the subsequent technical corrections,

EPA has the discretion to process it accordingly.) EPA encourages States to discuss and coordinate upcoming authorization applications with EPA Regions to determine the most efficient approach to take regarding the submission of revision applications, in light of today's rulemaking.

It is important to note that this abbreviated process for the authorization of minor or routine rules only addresses the procedures for processing certain State authorization applications. Today's procedure does not affect the continued responsibility of States to inform EPA of changes to its basic statutory or regulatory authority under 40 CFR 271.21(a). Likewise, today's rule does not affect EPA's ability under 40 CFR 271.21(d) to request a supplemental Attorney General's statement, program description, or ~~such~~ other documents or information as ~~are~~ necessary.

Occasionally, EPA requests additional information from a State under 40 CFR 271.21(d). A prime example is when a State uses non-RCRA authorities to implement rule requirements, such as for the part of the LDR Phase IV rule that deals with mineral processing wastes. If a State were to use alternative authorities to seek authorization, EPA would probably request additional information from the State Attorney General. Further, where a rulemaking would have a significant impact on the size of a State's universe of regulated facilities, EPA may ask for a revised Program Description and/or a revised MOA. Although EPA does not believe that situations such as this will be common, States should be aware of these and work with the EPA Region before an application is submitted, so that issues regarding the contents and review requirements for an application may be resolved.

F. Final Abbreviated Authorization Procedures

Today's rule amends 40 CFR 271.21 to create a new authorization procedure in paragraph

271.21(h) that consists of an abbreviated application and an expedited process. Note that this procedure was originally proposed in a new section 271.28, but then paragraph 271.21(h) was reserved for this procedure in the April 29, 1996, HWIR-media proposal. Likewise, in the proposal the rules for which this authorization procedure would be used were listed in 40 CFR 271.28(a), but are now listed in new Table 1 to section 271.21. EPA believes that this table format is easier to read than the proposed listing.

G. Authorization application requirements

The requirements for a State's abbreviated application are located at 40 CFR 271.21(h)(1). These application requirements are essentially unchanged from the August 22, 1995 proposal. This abbreviated application does not require a revised Program Description, Memorandum of Agreement, or Attorney General's Statement. Instead, the application must include a certification from the State that the laws and regulations of the State provide authorities that are equivalent to, and no less stringent than the Federal authorities for which the State is seeking authorization. The certification must include appropriate citations to the specific statutes, administrative regulations and where appropriate, judicial decisions. It must also include a copy of the applicable State laws and regulations. The cited State statutes and regulations must be lawfully adopted and fully effective at the time the certification is signed. This State certification may be signed by the signatory of the State application. Although the Attorney General may sign this certification, the signature of the Attorney General is not necessary for the authorization of the minor rules subject to today's procedures. These minor or routine rules do not affect the previously authorized legal authority of the State to carry out its hazardous waste program. This requirement is consistent with the provisions of the proposed rule, which did not require the Attorney General to sign the

certification. EPA did not receive any negative comments on this aspect of the proposed rule.

H. Procedures for reviewing and approving applications

EPA expects that a concerted effort from both the EPA Regions and States will be essential to meet the deadlines specified in new § 271.21(h). Thus, the Agencies should coordinate their efforts before and after the State application is submitted. EPA encourages States to submit applications in draft form where feasible. This will make it easier for the State to incorporate any changes to its application, and will reduce the frequency of errors in the final application. States should note that high level signatures, such as from the State Director, are not required for a draft application. Further, to make the Regional review more efficient, States should provide clear explanations regarding changes they have made to the Federal regulations and provide a crosswalk between State and Federal regulations.

Once the State submits an application to EPA, the Agency will conduct an expedited review of the State's regulations. This review will consist primarily of a check for completeness and errors within the State regulations, such as LDR treatment levels that are above the Federal levels (and thus are less stringent). EPA anticipates that ~~such~~ these errors will be rare because the rulemakings eligible for this abbreviated procedure are not complex, and easily adopted by the State. This review would constitute the finding of equivalency required by section 3006 of RCRA. Note that this procedure does not affect in any way a State's ability to promulgate regulations more stringent than the Federal regulations under section 3009 of RCRA.

Under section 271.21(h)(2), EPA is required to notify the State within 30 days of receipt of the application if EPA determines that the application, including the certification, is not complete or contains errors. The reasons why EPA could determine that an application is not complete are

specified in section 271.21(h)(3). These reasons are: 1) copies of applicable statutes or regulations were not included, 2) the statutes or regulations relied on by the State to implement the program revisions are not yet in effect, 3) in the certification, the citations to the specific statutes, administrative regulations and where appropriate, judicial decisions are not included or incomplete, and 4) the State is not authorized to implement the prerequisite RCRA rules as specified in § 271.21(h)(5). If EPA does find that an application is incomplete or contains errors, EPA will summarize the deficiencies in the completeness notice sent to the State under § 271.21(h)(2).

After the State submits an application to the Region (either in draft or final form), the EPA Region should discuss any questions and concerns with State staff. One purpose of these discussions is to seek clarification regarding the State's application, and to attempt to resolve these questions and concerns. Thus, if EPA's questions and concerns are resolved through these discussions, a completeness notice may not be necessary since there would be no outstanding issues. EPA Regions also should commit to conduct additional reviews only on application components that are new or have changed since the previous submission. EPA Regions will prioritize any comments submitted to the States regarding a draft or final application, and will make distinctions between those errors that cause a State's regulations to be less stringent and need to be changed before the application can be approved, and those that may be made at a State's discretion, such as typographical errors.

Occasionally, EPA requests additional information from a State. A prime example is when a State uses non-RCRA authorities to implement rule requirements, such as for the part of the LDR Phase IV rule that deals with mineral processing wastes. If a State were to use alternative

authorities to seek authorization, EPA would probably request additional information from the State Attorney General. Further, where a rulemaking would have a significant impact on the size of a State's universe of regulated facilities, EPA may ask for a revised Program Description and/or a revised MOA. Although EPA does not believe that situations such as this will be common, States should be aware of these and work with the EPA Region before an application is submitted, so that issues regarding the contents and review requirements for an application may be resolved.

After addressing EPA comments, if any, the State will then resubmit the application to EPA as a final application. Of course, EPA encourages the States to seek clarification regarding any of the Regional comments so they can be properly resolved before resubmitting an application.

Under section 271.21(h)(4), EPA will publish an immediate final rule in accordance with the requirements of section 271.21(b)(3), within 60 days of receiving a complete final application under paragraph (h)(2). Thus, if EPA does not find any deficiencies in a State's final application, this notice will be published within 30 days after EPA completes its check. Likewise, if EPA finds deficiencies in a State's application, this notice will be published within 60 days after receipt of a new corrected application. This immediate final rule is the same promulgation procedure used for other revision authorization decisions, which provides the public the ability to comment on tentative EPA authorization decisions before they become effective. The notice would provide for a 30-day public comment period, and would normally go into effect 60 days after publication unless an adverse comment is received by EPA.

I. EPA's Decision to Not Promulgate Proposed Category 1 and 2 Procedures

In comments on the proposed Category 2 procedures, most commenters supported the

concept of improving the authorization procedures. However, many commenters did not support the specific procedural changes that would apply to the authorization of significant rules. These commenters maintained that the proposed Category 2 procedures were too complex and cumbersome, and did not address the underlying interactions between EPA and States within the process. In addition, the proposed procedures would not have affected the authorization process for the dozens of previously promulgated rules for which States are not authorized. Other commenters believed that the proposed Category 2 procedures would amend the EPA review process and standard of review in a way that was not consistent with the RCRA statutory requirements. As a result of these comments, EPA has further evaluated the existing barriers to accomplishing the goals of the proposals. EPA has concluded that many of the barriers to the authorization of significant rules involve the process of communication and coordination between EPA and States that is more appropriately addressed through guidance and other non-regulatory means. EPA is also not finalizing the modifications to the proposed Category 1 procedures that were proposed in the January 25, 1996 notice (see 61 FR 2338). These modifications were opposed by commenters. (See the discussion above regarding the authorization of States for the mineral processing part of the LDR Phase IV rule.)

J. Improvements to the Existing Authorization Process

EPA believes that the abbreviated procedures promulgated today will help make the State authorization program more efficient. However, most of the authorization work that confronts EPA and States will continue to involve rules that are considered to be significant rules, which are not affected by today's procedure. Examples of these rules include the Boiler and Industrial Furnace rule, the Used Oil rule, and today's HWIR-media rule. EPA believes that many of the

coordination and communication activities recommended for today's abbreviated process should be applied to the development and review of all other authorization applications. One example is the prioritization of Regional comments that may be submitted to the State. Further, EPA recommends that EPA Regions and States hold discussions throughout the authorization process to foster closer coordination between the agencies. For example, before a State develops an application, the agencies should discuss what revisions to the MOA and Program Description may be necessary, and any major changes to the regulations planned by the State. These discussions can be used to produce an authorization process time line that satisfies the needs of both agencies. This time line should contain commitments by both the Region and State to provide expeditious turn-around of comments on applications, revisions to applications, and other correspondence. To meet these commitments, Regions should set internal deadlines for review based on the size of the application and the method a State uses to adopt the Federal regulations. Finally, to avoid numerous submissions of the same document, Regions should help the State develop acceptable language when appropriate or desired by the State.

XII. Conforming changes (§§ 265.1(b), 268.2(c), 268.50(g), 270.11(d), and 270.42 Appendix 1)

Section 265.1(b), which discusses the applicability of Part 265 and other standards at interim status facilities, is amended in today's rule to incorporate 40 CFR 264.554 (staging piles requirements) into the list of standards that apply to interim status facilities. Because today's rule for staging piles includes Part 264 requirements for staging piles, but not Part 265 requirements, EPA wanted to make this conforming change to make it clear that staging piles can be used at interim status facilities. The same conforming change was made in the February 16, 1993 CAMU

rule to incorporate CAMUs and temporary units into the same provision for the same reason. The CAMU rule stated, "heretofore, technical requirements for interim status facilities were specified only under Part 265. Therefore conforming changes are necessary...." The CAMU, temporary unit and staging pile provisions are the only Part 264 standards that apply to interim status facilities. The CAMU rule also made a similar conforming change to § 264.3; however that change used the phrase "40 CFR Part 264 Subpart S," which includes the provisions for staging piles, so no additional conforming changes to § 264.3 are necessary.

The conforming change to § 268.2(c) is a change to the definition of land disposal. Because placement in a staging pile does not constitute land disposal, it is necessary to make that clear in the definition of land disposal. EPA made the same change for CAMUs in the February 16, 1993 CAMU rule. The new language changes the definition to read that "land disposal means placement in or on the land, except in a corrective action management unit or staging pile." For further discussion of the applicability of land disposal restrictions to staging piles, see the staging piles section of today's preamble.

The conforming change to § 268.50(g) makes it clear that storage in a staging pile is not prohibited under the Part 268 Subpart E prohibitions on storage. A full discussion of this change can be found in the staging piles section of today's preamble.

The changes to § 270.11(d) in today's rule offer an alternative certification for land owners applying for a RAP at a remediation waste management site. A full discussion of this change can be found in the preamble discussion of § 270.82(a) in today's preamble.

The changes to Appendix 1 of § 270.42 specify which type (Class 1, 2, or 3) of permit modification is necessary for using staging piles at closing facilities and for approval of staging

piles or operating term extensions at corrective action facilities. Both of these activities require a Class 2 permit modification. This decision is discussed further in the staging pile section of today's preamble.

XIII. How does today's rule relate to other EPA regulations, initiatives and programs?

A. Subpart S Initiative

EPA expects today's rule to complement activities being ~~undertaken~~ done under the Subpart S Initiative. The Subpart S initiative is an effort to identify and implement broad-based improvements to the corrective action program, drawing upon more than ten years of experience in program implementation. The Subpart S Initiative addresses such issues as corrective action program priorities, use of administrative flexibility in implementing corrective action, and development of guidance and regulations for setting site-specific conditions in permits and orders for investigating and remediating releases. The May 1, 1996 Advance Notice of Proposed Rulemaking (61 FR 19432) describes the Subpart S Initiative in detail. Because the HWIR-media regulations specifically address the management of remediation waste during site clean up, ~~and therefore~~ they complement the broader Subpart S Initiative.

B. Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media and Debris

EPA had hoped that the more comprehensive reforms proposed in the HWIR-media proposal would sufficiently address the issues raised in the "Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media and Debris" proposal. This proposal, generally referred to as the "Non-UST TC Suspension," was published on December 24, 1992 (57 FR 61542). EPA never finalized the Non-UST Suspension, but stated in the HWIR-media proposal

that finalization would not likely be necessary because a final HWIR-media rule would solve the problems that the Non-UST TC Suspension was intended to address. However, especially in light of the more limited changes included in today's final rule, EPA recognizes that additional reform may be needed for the cleanup of non-UST petroleum contaminated media and debris.

States have developed petroleum response programs to respond to petroleum contamination including contaminated media and debris. However, as stated by many States with ~~such~~ these programs, if the wastes must be managed as RCRA hazardous because they fail the TCLP test for benzene (as is sometimes the case), then the applicable Subtitle C requirements such as LDR, MTR and permitting delay the response actions, ~~and~~ significantly increase costs, and in some cases may act as a disincentive to full cleanup. ~~without providing additional environmental benefit.~~ If remediation wastes, including petroleum contaminated media and debris, had been excluded under either the Bright Line or Unitary Approaches proposed in the HWIR-media proposal, then those State programs may have been able to conduct responses as they had planned, and the Non-UST TC Suspension may have no longer been needed. However, today's HWIR-media rule does not exclude any wastes from Subtitle C requirements, and although EPA is streamlining the permitting process, it is still ~~a delay~~ time consuming in comparison ~~compared~~ to the fast response times needed by these State petroleum response programs. EPA will continue to ~~evaluate the comments on~~ review the issues addressed in the Non-UST TC Suspension proposal (and ~~any additional~~ subsequently raised in comments received on ~~those issues for~~ the proposed HWIR-media rule); however, the Agency is not taking final action today on that proposal. ~~and will take final action on the Non-UST TC Suspension proposal in future actions.~~

C. Deferral of Petroleum-Contaminated Media and Debris from Underground Storage

Tank Corrective Actions

Today's rule does not affect the temporary deferral from certain portions of EPA's hazardous waste regulations of petroleum-contaminated media and debris that are generated from underground storage tank corrective actions that are subject to Subtitle I of RCRA. This UST deferral was published on March 29, 1990 (55 FR 11862), and amended later on June 29, 1990 (55 FR 26986). The deferral appears at 40 CFR Part 261.4(b)(10).

D. Hazardous Waste Identification Rule (HWIR-waste) (May 20, 1992, and December 21, 1995)

Although today's rule and the HWIR-waste rule are often discussed together, they are two separate rulemaking efforts on separate schedules. Today's rule does not address, in any way, the key issue of the HWIR-waste rule, which is at what point wastes and media should exit the Subtitle C regulatory system. EPA will sign a new proposal for HWIR-waste by October 31, 1999 and a final rule by April 30, 2001.

E. CERCLA

EPA expects that the provisions in today's rule applicable to staging piles will provide the CERCLA program with more flexibility at CERCLA sites where ~~such~~ these provisions are ARARs. EPA does not expect the new RAP provisions to have any effect on CERCLA sites ~~from the RAP provisions~~, because CERCLA sites do not require permits for on-site management of remediation wastes. Likewise, because the dredged sediments exclusion will not alter current practice significantly, EPA does not expect significant impact from the new dredged material provisions on the CERCLA program. Finally, today's streamlined State authorization procedures will have no effect on the CERCLA program. In summary, EPA anticipates some positive effect

on the CERCLA programs from staging piles, but little or no effect on the CERCLA program from the other provisions of HWIR-media.

F. Legislative reforms

While EPA believes today's rule will improve remediation waste management and expedite cleanups, the Agency also recognizes that additional reform is needed, especially for management of non-media remediation wastes, such as ~~like~~ remedial sludges, and to provide for more tailored land disposal requirements, minimum technological requirements, and address certain statutory permitting requirements. The Agency considers today's rule to be a partial step, rather than a full solution to the problems raised by the application of RCRA Subtitle C requirements to remediation wastes. The Agency will continue to participate in discussions on potential legislation to promote this additional needed reform. If legislation is not forthcoming, the Agency may reexamine its approach to remediation waste management and may take additional administrative action.

G. Brownfields

Today's rule complements EPA's continuing efforts to address Brownfields properties. The Agency defines Brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. In February 1995, EPA announced its Brownfields Action Agenda, launching the first Federal effort of its kind designed to empower States, tribes, communities, and other parties to safely clean up, reuse, and return Brownfields to productive use. In 1997, to broaden the mandate of the original agenda, ~~in 1997~~ EPA initiated the Brownfields National Partnership Agenda, involving nearly 20 other Federal agencies in Brownfields cleanup and reuse. Since the

1995 announcement, EPA has funded Brownfield pilots and reduced barriers to cleanup and redevelopment by clarifying environmental liability issues, developing partnerships with interested stakeholders, and stressing the importance of environmental workforce training.

As the Agency's Brownfield activities have increased, EPA and stakeholders have recognized that the statutory and regulatory hazardous waste management and permitting requirements under RCRA can render the cleanup and reuse of Brownfields properties cost and time prohibitive. In particular, certain RCRA requirements, written with "end of pipe" wastes in mind, may be unnecessarily burdensome when applied to Brownfield cleanups. By streamlining the permitting process and removing the requirement for facility-wide corrective action at ~~cleanup-only sites~~ remediation-only facilities, today's rule should facilitate cleanup activities. Reducing RCRA impediments to cleanup activities not only addresses existing Brownfield sites by facilitating cleanups at ~~such~~ these sites, but also helps prevent the creation of future Brownfields by encouraging proactive responses to site contamination during the productive life of a facility.

H. Land Disposal Restrictions (Part 268)

EPA proposed revisions to the treatment standards for hazardous contaminated soils first in the Phase II LDR rule, "Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soils," 58 FR 48092, and again in the April 29, 1996 HWIR-media proposal, 61 FR 18780. EPA finalized the soil treatment standards in the final LDR Phase IV rule (63 FR 28556 (May 26, 1998).

XIV. When will the final HWIR-media rule become effective?

Today's rule will become effective **[Insert six months after date of promulgation]**.

XV. Regulatory Requirements

A. Assessment of Potential Costs and Benefits

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether any proposed or final regulatory action is "significant." Significant regulatory actions must be assessed in greater detail than minor actions, and are subject to full Office of Management and Budget (OMB) review under Executive Order 12866 requirements. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) 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;

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

(c) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

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

The Agency has determined that today's final rule is a "significant regulatory action" ~~on the basis of~~ because it raises "novel legal or policy issues" as specified in (d) above. This is the case even though the Agency estimated that, for today's rule, the overall impacts quantified ~~for today's rule~~ show a cost savings of between $5 million and $35 million per year, which does not meet the threshold for (a) above. Therefore, this final rulemaking action is subject to full OMB review

under the requirements of the Executive Order. The Agency has prepared an economic assessment background document in support of today's final rule which provides much greater detail than this preamble discussion on the analysis of today's standards ("Economic Assessment of the Final Hazardous Waste Identification Rule for Contaminated Media"). A copy of that document can be found in the docket for today's rule; a summary of this assessment is presented below.

2. Background

Today's rule addresses three main issues: dredged material exclusion, staging piles, and ~~remediation~~ remedial action plans (RAPs). Although still believing there is a need for comprehensive regulatory reform of remediation waste management requirements, ~~for a number of reasons, explained in this preamble,~~ the Agency has decided not to go forward with the comprehensive regulatory changes which were proposed in the April 29, 1996 HWIR-media Proposed Rule (61 FR 18780). (Please see section II.E. for a full discussion of the basis for the Agency's decision.) The economic assessment prepared in support of today's rule addresses only the three main issues covered in the rule, none of which were analyzed in the proposed rule economic assessment due to their relatively small scale impacts compared with the other proposed rule provisions. ~~An additional document has been prepared in response~~ The response to comments document for today's rule responds to comments received on the proposed rule economic assessment, and is available in the docket for today's rule.

3. Need for regulation

Today's rule provides relief from existing regulatory requirements in three specific cases dealing with remediation and management of wastes. The dredged material exclusion excludes

from RCRA requirements a portion of dredged material handled under CWA and MPRSA permits, and thus provides clarity of regulatory jurisdiction and removes the potential for duplicative effort. The staging pile provision allows for temporary storage of remediation wastes in preparation for future management. This temporary relief from the ~~regular~~ traditional requirements ~~of~~ for land placement provides potential cost savings and encourages remediation of wastes. Additionally, the ~~remediation action plan (~~RAP~~)~~ provision allows for remedial activities to occur under an expedited vehicle instead of the customary RCRA permit requirements. Furthermore, use of this vehicle does not invoke RCRA 3004 (u) facility-wide corrective action obligations; those facilities already under facility-wide corrective action requirements which employ a RAP remain under ~~such~~ these requirements. Thus, today's rule represents a ~~small step toward~~ modest ~~regulatory~~ reform of the remediation waste requirements, while maintaining protection of human health and the environment.

4. Assessment of Potential Regulatory Costs

The economic assessment examines the cost impacts of the provisions of today's rule. Benefits of the rule, in the form of human health and environmental risk impacts, are not examined in this assessment. The Agency believes, however, that these provisions will tend toward greater protection of human health and the environment by promoting more cleanups. Economic impacts to industries affected by today's rule have not been estimated, as the rule provides an overall cost savings.

a. Methodology and Results for Estimating Regulatory Costs

i. Dredged Material Exclusion

The Agency did not assess impacts from the dredged material exclusion in the proposed rule

economic assessment, and provided a qualitative assessment of the cost savings for this provision in the final rule.

The Agency believes that this exclusion will result in minor reductions of compliance costs with respect to current practices of dredged material management. ~~The savings would result from any current management of dredged material under RCRA being now excluded from such requirements.~~ The Agency did not collect volume data on dredged material management under RCRA~~, which volumes would fall under this exclusion~~. Therefore, no estimate of the ~~size of the~~ cost savings has been developed, although it is not expected to be significant. In addition to the minor cost savings associated with this provision, the exclusion may also decrease the potential for procedural delays (caused by multiple permit applications) that ~~prevent~~ delay timely waste disposal.

ii. Staging Piles

The Agency did not assess the impacts of remediation piles (the predecessor of staging piles in the proposed rule) in the proposed rule economic assessment, and has not quantified the impacts from this provision in today's final rule economic impact assessment. Because of the narrow scope of the staging pile provisions and their significant overlap with existing CAMU~~, and~~ temporary unit, and AOC provisions, ~~the Agency believes that this portion of the rule will likely have only minor cost savings and economic impacts~~ it is very difficult to determine the impacts resulting from the use of staging piles. As discussed earlier, in some cases, staging piles may facilitate the short-term accumulation of remediation wastes until a sufficient volume can be shipped to a treatment or disposal facility or accumulated to implement cost-effective on-site management. In these situations, the new provisions will result in cost savings~~. The Agency,~~

however, does not expect that the use of staging piles will provide significant quantifiable cost savings, and any savings provided realized must be evaluated in light of the costs associated with obtaining staging pile approval (either through a RCRA permit or a RAP) however, the Agency believes these cost savings will be minor. The staging pile provisions will, however, not result in any increase in cost because their use is voluntary. Therefore, site decision makers will not use them unless the costs are less than the benefits.

One alternative which the Agency has determined not to adopt in today's final rule is to allow treatment in staging piles. Allowing treatment would potentially increase the use of staging piles, making them more beneficial in certain cases where a CAMU is not required necessary for disposal and a temporary unit does not provide enough management flexibility. However, the Agency believes that these cases would be relatively few, and that treatment is more appropriate for in a CAMU, which has design and operating standards to fit the requirements surrounding treatment in a unit.

iii. Remediation Action Plans (RAPs)

This section of the preamble summarizes the methodology and results for the cost assessment performed on the remediation action plan (RAP) provisions in today's final rule. The Agency estimates a total cost savings of between $5 million and $35 million per year for the RAP provision. The Agency did not assess the impacts of RAPs in the proposed rule economic assessment.

To evaluate this new provision, the Agency performed a quantitative analysis focusing on the cost saving opportunities provided by RAPs to unpermitted facilities which excavate contaminated media and send it off-site for treatment. An additional savings is estimated to occur

at unpermitted facilities which are not currently ~~not~~ undertaking remediation due to requirements involved in RCRA permitting; however, this savings has not been quantified.

Facilities permitted under RCRA, as well as interim status facilities, are already under facility-wide corrective action obligations, and would therefore be much less likely to shift to use of RAPs given the relatively minor incremental savings of using a RAP over obtaining a permit modification. Therefore, unpermitted facilities, mainly from State and voluntary cleanups, were examined for a cost savings impact from the RAP provisions. To calculate this savings, the Agency: (1) estimated the total number of unpermitted facilities currently sending remediation waste off site in the baseline; (2) determined the number of facilities in this group which will shift current practices to take advantage of the RAP provision (~~i.e.~~ that is, will shift to on-site treatment); (3) projected an incremental cost savings for this shift; and (4) applied it to the number of facilities determined to shift ~~in order~~ to estimate the total cost savings for that group. The cost savings was quantified as the reduction in transportation costs for facilities which are estimated to no longer ship waste off-site for treatment, and the reduction in treatment costs for those facilities projected to shift from off-site ex-situ treatment in the baseline to on-site in-situ treatment in the post-regulatory case. The Agency estimated the number of States which already have permit-waiver authority, and thus where the RAP provision is less likely to have a significant impact; this figure was employed in determining the number of facilities likely to be impacted.

The total number of facilities estimated to shift to use of RAPs is between seven and 66 facilities, all of which currently (in the baseline) treat excavated contaminated media off-site. The total cost savings estimated for this group is between $5 million and $35 million per year.

~~5. Regulatory Issues~~

B. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken ~~to incorporate~~ incorporation of environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of the HWIR-media final rule on low-income populations and minority populations.

EPA has concluded that today's final rule will potentially advance environmental justice causes. The HWIR-media final rule will potentially assist in expediting site cleanups across the nation by reducing the need for time-consuming permitting of on-site cleanup activities, increasing the flexibility of decision-makers to respond to site-specific conditions, and lessening administrative and regulatory complications and delays. This may free ~~Superfund and other~~ remediation resources to address additional sites. By encouraging excavation of contaminated media, the HWIR-media final rule will expedite the restoration of sites and lead to their beneficial use, which may result in new jobs and increased economic activity in low-income or minority communities. This economic activity could take the form of increased employment of local

community members at the cleanup sites; the sale and redevelopment of sites for new economic activities; and new beneficial uses for remediated properties, such as parks, transportation facilities, and even hospitals.

C. Unfunded Mandates Reform Act

The Agency also evaluated the final HWIR-media rule for compliance with the Unfunded Mandates Reform Act of 1995. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, Local, and Tribal governments, in the aggregate or to the private sector, of $100 million or more in one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely

input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Local, or Tribal governments or the private sector because the UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. HWIR-media is a voluntary program as it applies to State, Local, and Tribal governments. In addition, promulgation of the HWIR-media rule, because it is considered less stringent than current requirements, is not expected to result in mandated costs estimated at $100 million or more to any State, Local, or Tribal governments, in any one year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. Finally, EPA has determined that the proposed HWIR-media rule contains no regulatory requirements that might significantly or uniquely affect small governments, and thus is not subject to the requirements of section 203 of the UMRA. Specifically, the program is generally less stringent than the existing program and makes no distinctions between small governments and any potentially regulated party.

D. Executive Order 12875: Enhancing the Intergovernmental Partnership

Executive Order 12875 on enhancing the intergovernmental partnership charges Federal agencies with establishing meaningful consultation and collaboration with State and Local governments on matters that affect them. In most cases, State governments are the level of government that regulates hazardous waste. EPA has consulted with State officials to develop today's rule. EPA invited several States, representing various parts of the country, to participate

during rulemaking process which added considerable value to the rulemaking effort.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (~~i.e.~~ that is, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Agency has determined that today's final rule will not have a significant adverse economic impact on a substantial number of small entities, because the rule is estimated to provide regulatory relief, and will not impose any costs on the regulated community. (For the analysis of impacts showing the relief nature of today's rule, see the above economic assessment.) Therefore, no RFA has been prepared. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1775.02) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The Agency has estimated the burden associated with complying with the requirements of this proposed rule. Included in the ICR are the burden estimates for the following requirements for industry respondents: reading the regulations; for staging piles, applying, keeping records, requesting extensions, closing, and incorporating into permits; for general facility standards for remediation waste management sites, obtaining an EPA identification number, performing waste analysis, demonstrations for locating units in floodplains, and contingency and emergency plans; for RAPs at permitted facilities, the permit modification procedures; and finally, for RAP applicants, the data in the RAP application, transfer of facility ownership, and recordkeeping. Included also are the burden estimates for State respondents for applying for abbreviated State authorization.

The Agency has determined that all of this information is necessary to ensure compliance with today's rule. Specifically, the information for staging piles is required to ensure that the design and operating of staging piles will comply with all applicable regulations and will be protective of human health and the environment, to ensure that staging piles are operated within the two year

limit, to ensure that any requested extensions are necessary and will not threaten human health and the environment, to ensure that staging piles are closed ~~in accordance with~~ according to the applicable regulations, and finally, to ensure that permits are modified appropriately. The information for general facility standards is necessary to ensure consistent and coordinated identification of the site ~~through the identification number~~, to have adequate knowledge of the waste being managed to ensure the appropriate waste management requirements are complied with, ~~to not locate units in floodplains unless the necessary precautions are taken,~~ and to be adequately prepared for contingencies and emergencies. The information for RAPs is necessary to determine whether the remediation waste management activities will comply with the applicable regulatory requirements, to ensure smooth transfer of facility ownership, and to ensure that facility owners and operators have access to all relevant information regarding their RAP application. The information for State respondents seeking authorization is necessary to verify legal authorities and confirm that the State requirements are no less stringent then Federal law.

All of the information required under today's rule is required only when the respondent wishes to obtain a benefit such as a staging pile, a RAP, or State authorization. Provisions already exist, such as other units in Part 264, and traditional RCRA permits whereby respondents could perform the same functions allowed in staging piles and RAPs, except that staging piles and RAPs may be more desirable because they are more flexible and more appropriate for the cleanup scenario, so respondents may voluntarily choose to obtain staging piles and RAPs ~~in lieu~~ instead of other options, but they are not required to. Also, because today's rule is less stringent then the existing RCRA regulations, it is optional for States to adopt and seek authorization for this rule. Therefore, States could choose not to adopt today's rule.

Section 3007(b) of RCRA and 40 CFR Part 2, Subpart B, which define EPA's general policy on the public disclosure of information, contain provisions for confidentiality and apply to today's rulemaking.

EPA has tried to minimize the burden of this collection of information in respondents.

The universe of respondents is expected to be sites conducting cleanup under State and Federal cleanup programs. EPA expects that the industries most likely to be affected by these requirements will be associated with the following SIC codes:

SIC Code Industry

2491 Wood preserving

2812 Alkalies and chlorine

2819, 2869 Industrial organic chemicals

2821 Plastics materials and resins

2879 Agricultural chemicals

2899 Chemical preparations

2911 Petroleum refining

3000 Rubber and miscellaneous plastics products

3089 Plastics products

3229 Pressed and blown glass

3316 Cold finishing of steel shapes

3339 Primary nonferrous metals

3341 Secondary nonferrous metals

3470 Metal services

3480, 3489 Ordnance and accessories

3482 Small arms ammunition

3568 General industrial machinery

3662 Communications equipment

3674 Semiconductors and related devices

3691 Storage batteries

3728 Aircraft parts and equipment

3764 Space propulsion units and parts

3792 Travel trailers and campers

3820 Measuring and controlling devices

3840 Medical instruments and supplies

4230 Trucking terminal facilities

4581 Airports, flying fields, and services

4953 Refuse systems

7210 Laundry, cleaning, and garment services

8221 Colleges and universities

9711 National security

EPA estimates the projected annual hour burden for industry respondents will be 33,733 hours, and cost of $1,967,699. Total estimates over three years are 101,199 hours and $5,903,097. EPA estimates that State agency respondent will incur a total annual burden of 886 hours and $22,410, which over three years would be 2,658 hours and $67,230. EPA estimates that the annual Agency burden will be 5,726 hours and $176,899, which over three years would

be 17,178 hours and $530,697. As subsets of the above total costs, EPA estimates no annual capital costs, and annual operation and maintenance costs for staging piles and RAPs of $49,902, and for State authorization of $54. As a subset of operation and maintenance, EPA estimates $750 each time a responder purchases services for waste analysis, for a total of $65,472. This is the only area where EPA expects purchase of services.

For complying with the requirements of the HWIR-media rule, industry respondents are expected to spend an average of 13.7 hours per year on recordkeeping requirements and 5.0 hours per year on reporting requirements. State agency respondents are expected to spend no time on recordkeeping, as there are no recordkeeping requirements for the States, and 16.4 hours per year on reporting requirements.

EPA estimates that 1,805 site are eligible for RAPs and staging piles, and are assumed by EPA to be the universe of potential responders. These 1,805 potential responders are expected to read the regulations. EPA estimates that 90 responders per year will use staging piles, and 66 responders per year will use RAPs. EPA estimates that 18 States per year will apply for authorization. Responders will only need to respond once for each activity for staging piles, RAPs, or State authorization.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a

collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested within **[Insert date 30 days after publication in the FEDERAL REGISTER]**. Include the ICR number in any correspondence.

G. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (~~e.g.~~ for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using ~~such~~ these standards.

EPA is not proposing any new test methods or other technical standards as part of today's final rule. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule.

H. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (see 62 FR 19885, April 23, 1997) applies to any rule that EPA determines: (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because this is not an "economically significant" regulatory action as defined by E.O. 12866.

List of Subjects

40 CFR Part 260

Hazardous waste

40 CFR Part 261

Hazardous waste

40 CFR Part 264

Hazardous waste

40 CFR Part 270

Administrative practice and procedure

Hazardous Waste

Reporting and recordkeeping requirements

40 CFR Part 271

Administrative practice and procedure

Hazardous waste

Intergovernmental relations

Reporting and recordkeeping requirements

Authority: 42 U.S.C. 6912(a), 6921, 6924, 6926, and 6927

HAZARDOUS REMEDIATION WASTE MANAGEMENT REQUIREMENTS (HWIR-media)

Date

Carol M. Browner,
Administrator

For reasons set out in the preamble, 40 CFR Parts 260, 261, 264, 270 and 271 are amended as follows: