

US EPA ARCHIVE DOCUMENT

**TABLE OF CONTENTS FOR DRAFT REGULATORY LANGUAGE**  
**FOR FINAL HWIR-MEDIA RULE**

**This version indicates in redline/strikeout those changes made to the regulatory text  
at the request of EPA  
during review by the Office of Management and Budget**

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**DRAFT REGULATORY LANGUAGE FOR FINAL HWIR-MEDIA RULE**

**PART 260 - HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

Subpart B--Definitions

4. These regulations amend Section 260.10 by: (a) revising the definition of corrective action management unit, by revising the first sentence, by removing the second sentence, and; (b) by adding (3) to the definition for “facility;” (c) by revising the definition of miscellaneous unit; (d) by revising the definition of “remediation waste;” and (e) adding the definitions for remediation waste management site and staging pile. The new language reads as follows:

§260.10 Definitions.

When used in Parts 260 through 273 of this chapter, the following terms have the meanings given below:

\*\*\* \*\*

Corrective action management unit ~~or (CAMU)~~ means an area within a facility that is designated by the Regional Administrator under Part 264 subpart S either: (1) 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 be ~~is~~ **is only** used **only** for the management of **managing** remediation wastes pursuant to ~~for~~ implementing corrective action or cleanup at the facility ~~(within the contiguous property under the control of the owner or operator).~~

\* \* \* \* \*

Facility

\* \* \* \* \*

(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 such corrective action requirements if the site is located within such a facility.

\* \* \* \* \*

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 **a** research, development, and demonstration permit under § 270.65, or staging pile.

\* \* \* \* \*

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, ~~that~~ **and** 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.~~



\* \* \* \* \*

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.

\* \* \* \* \*

Staging pile means ~~a non-containerized~~ **an** 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 ~~section~~ **40 CFR** § 264.554.

\* \* \* \* \*

## **PART 261--IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

\* \* \* \* \*

7. Section 261.4 is amended by adding paragraph (g) to read as follows:

\* \* \* \* \*

### §261.4 Exclusions

#### *(g) Dredged material that is not a hazardous waste*

Dredged material that is subject to the requirements of a permit that has been issued under section 404 of the Federal Water Pollution Control Act (33 U.S.C. §1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. §1413) is not a hazardous waste. For ~~purposes of this subsection~~ **paragraph**, the following definitions apply:

- (1) The term "dredged material" has the same meaning as defined in 40 CFR 232.2;
- (2) The term "permit" means:
  - (i) A permit issued by the U.S. Army Corps of Engineers (Corps) or **an** approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. §1344); ~~or~~
  - (ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. §1413); or
  - (iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs (i) and (ii) of this section, as provided for in Corps regulations (~~e.g.~~ **for example**, see 33 CFR 336.1, 33 CFR 336.2, and 33 CFR 337.6).

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

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

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

#### PART 264.1

Section 264.1 is amended by adding new paragraph (j) to §264.1 to read as follows:

§ 264.1 Purpose, scope and applicability.

\* \* \* \* \*

(j) The requirements of Subparts B, C, and D and § 264.101 of this Part do not apply to remediation waste management sites. **(However, some remediation waste management sites may be a part of** ~~unless they are part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of for the treatment, storage or disposal of hazardous wastes that do not constitute hazardous~~ **are not remediation wastes. In these cases, Subparts B, C, and D, and § 264.101 do apply to the facility subject to the traditional RCRA permit.)** ~~In lieu~~ **Instead** of the requirements of Subparts B, C, and D of this Part, owners or operators of ~~such~~ remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Administrator using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes **to be managed at the site**. At a minimum, the analysis must contain all **of** the information which must be known to treat, store or dispose of the waste ~~in accordance with~~ **according to** this Part and Part 268 of this chapter, and must be kept accurate and up to date;

(3) Prevent ~~people who are unaware of the danger from entering~~ **the unknowing entry of persons,** and minimize the possibility for ~~the unauthorized entry of persons~~ **people** or livestock **to enter** onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure ~~people unknowing persons, or unauthorized persons~~ or livestock who may enter the active portion of the remediation waste management site; and **that**

(ii) Disturbance of the waste or equipment by ~~the unknowing persons~~ **people** or ~~unauthorized entry of persons~~ or livestock **who enter** onto the active portion of the remediation waste management site, will not cause a violation of the requirements of this part;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges ~~which that~~ may be causing, or may lead to, **a** release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and **must** remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, **the owner/operator must take** remedial action ~~must be taken~~ immediately;

(5) Provide ~~remediation waste management site personnel~~ **with** classroom instruction ~~or on-the-~~

job training ~~that teaches them~~ **on how** to perform their duties in a way that ensures the remediation waste management site's compliance **complies** with the requirements of this Part, and ~~trains them~~ **on how** to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and **prevent** threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under Subparts I through O and Subpart X of this part, **the owner/operator must** design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of § 264.18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) ~~Have~~ **Develop and maintain** a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with §§ 264.221(c) and (d), 264.251(c) and (d), and 264.301(c) and (d) at the remediation waste management site, **according to** ~~in accordance with~~ the requirements of § 264.19;

(10) ~~Have~~ **Develop and maintain procedures to prevent accidents and a** ~~accident preparedness and prevention procedures and a contingency and emergency plan~~ **to control accidents that occur.**

**These procedures must address proper** ~~that addresses the~~ design, construction, maintenance, and operation of remediation waste management units at the site. **The goal of the plan must be** to minimize the possibility of, **and the hazards from** a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water ~~which that~~ could threaten human health or the environment. ~~and that is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.~~ The plan **must explain specifically how to treat, store and dispose of** ~~should~~ address the specific treatment, storage and disposal of the hazardous remediation waste in question, and must be implemented immediately whenever ~~there is a~~ fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health ~~and or~~ the environment;

(11) Designate at least one employee, either on the facility premises or on call (~~i.e., that is,~~ **quickly**), ~~with the responsibility for~~ **to coordinate** ~~coordinating~~ all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) ~~Have~~ **Develop, maintain** and implement a plan to meet the requirements of subparagraphs **(j)(2) through (j)(6) and (j)(9) through (j)(11)** ~~above of this section~~; and

(13) Maintain records documenting compliance with subparagraphs **(j)(1) through (j)(12)** ~~above of this section~~.

\* \* \* \* \*

Add 264.73(b)(17) as follows:

(17) Any records required under § 264.1(j)(13).

\* \* \* \* \*

Add 264.101(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.

Part 264 is amended by amending §§ 264.552(a) and 264.553(a) to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) ~~For the purpose of implementing~~ **To implement** remedies under § 264.101 or RCRA ~~Section § 3008(h), or to implement remedies~~ **at a permitted facility that is not subject to Part § 264.101, the Regional Administrator may designate an area at the facility (within the contiguous property under the control of the owner or operator), as a corrective action management unit, as defined in § 260.10, in accordance with **under** the requirements of this section. **A CAMU must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated.****

§ 264.553 Temporary Units.

(a) For temporary tanks and container storage areas used ~~for treatment or storage of~~ **to treat or store** hazardous remediation wastes during remedial activities required under § 264.101 or RCRA section 3008(h), or at a permitted facility that is not subject to Part 264.101, ~~the Regional Administrator may designate a unit at the facility (within the contiguous property under the control of the owner or operator), as a temporary unit.~~ **A temporary unit must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the temporary unit originated. For temporary units, the Regional Administrator may determine that a** ~~replace the design, operating, or closure standard applicable to such these units under parts 264 or 265 may be replaced by~~ **with** alternative requirements which ~~are protective of~~ **protect** human health and the environment....

12. Part 264 is amended by adding new § 264.554 to Subpart S to read as follows:

§264.554 Staging piles.

This section is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this section establishes enforceable legal requirements. ~~For the purposes of this section “I” and “you” refer to the owner/operator.~~

(a) *What is a staging pile?*

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~~ **according to** the requirements of this section.

(b) ~~How is a staging pile designated~~ *When may I use a staging pile?*

You may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only ~~in accordance with~~ **if you follow** the standards and design criteria the Director has designated for that staging pile. The Director must designate the staging pile in ~~either a permit or~~, **at an interim status facility, in a** closure plan or order (**consistent with §§ 270.72(a)(5) and (b)(5)**) (~~orders may only be used only at interim status facilities~~). The Director must establish conditions in the permit, closure plan, or order ~~in accordance that comply~~ with paragraphs (d) - (k) of this section.

(c) *What information must I provide to get a staging pile designated?*

When seeking a staging pile designation, you must provide:

- (1) Sufficient and accurate information to enable the Director to impose standards and design criteria for your staging pile ~~in accordance with~~ **according to** paragraphs (d)-(k) of this section;
- (2) 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 that you provide, that ~~such this~~ certification is not necessary to ensure that a staging pile will be ~~protective of~~ **protect** human health and the environment; and
- (3) Any additional information the Director determines is necessary to protect human health and the environment.

(d) *What performance criteria must a staging pile satisfy?*

The Director must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.

**(1) The standards and design criteria must comply with the following:**

- (i) The staging pile must facilitate ~~the implementation of~~ a reliable, effective and protective remedy;
- (ii) 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); and
- (iii) The staging pile must not operate for more than two years, except ~~in the cases where~~ **when the Director grants** an operating term extension ~~is provided by the Director 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~~ **first time you place** initial placement of remediation waste into a staging pile. You must maintain a record of the date of initial placement date ~~when you first placed remediation waste into the staging pile~~ for the life of the permit, closure plan, or order, or for three years, whichever is longer.

(2) **In setting the standards and design criteria, the Director must** ~~considering~~ the following factors:

- (i) Length of time the pile will be in operation;
- (ii) Volumes of wastes ~~to be stored~~ **you intend to store in the pile;**
- (iii) Physical and chemical characteristics of the wastes to be stored in the unit;
- (iv) Potential for releases from the unit;
- (v) Hydrogeological and other relevant environmental conditions at the facility ~~which~~ **that** may influence the migration of any potential releases; and
- (vi) Potential for human and environmental exposure to potential releases from the unit;

(2) And in accordance **complying** with the following:

(e) ~~Can~~ **May** a staging pile receive ignitable or reactive remediation waste?

**You must not place** ignitable or reactive remediation waste ~~must not be placed~~ in a staging pile unless:

(1) **You have treated, rendered or mixed** the remediation waste ~~is treated, rendered or mixed~~ before it is **you** placed ~~it~~ in the staging pile so that:

- (i) The remediation waste no longer meets the definition of ignitable or reactive under § 261.21 or § 261.23 of this chapter; and
- (ii) **You have complied with** § 264.17(b) ~~is complied with;~~ or

(2) **You manage** the remediation waste ~~is managed in such a way that it is protected to protect it~~ from exposure to any material or condition ~~which~~ **that** may cause it to ignite or react.

(f) *How do I handle incompatible remediation wastes in a staging pile?*

The term “incompatible waste” is defined in 40 CFR § 260.10. **You must comply with the following requirements for incompatible wastes in staging piles:**

(1) You must not place incompatible remediation wastes in the same staging pile unless you have complied with § 264.17(b);

(2) If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers, other piles, open tanks or land disposal units (~~e.g.~~ **for example**, surface impoundments), you must separate the incompatible materials, or protect them from one another by ~~means of~~ **using** a dike, berm, wall or other device; and

(3) You must not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ~~ensure compliance~~ **comply** with § 264.17(b).

(g) *Are staging piles subject to **Land Disposal Restrictions (LDR)** and **Minimum Technological Requirements (MTR)**?*

**No.** Placement of **Placing** hazardous remediation wastes into a staging pile does not constitute land disposal of hazardous wastes or ~~creation of~~ **create** a unit **that is** subject to **the** minimum

technological requirements of RCRA § 3004(o).

(h) *How long may I operate a staging pile?*

The Director may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. You ~~may only~~ **must** use a staging pile for **no longer than** the length of time designated by the Director in the permit, closure plan, or order (the “operating term”), except as provided in paragraph (i) of this section.

(i) ~~Can~~ **May** I receive an operating extension for a staging pile?

(1) The Director may ~~provide~~ **grant** one operating term extension of up to 180 days beyond the operating term limit contained in the permit, closure plan, or order (see paragraph (l) of this section for modification procedures). ~~In order~~ To justify to the Director the need for an extension, you must provide sufficient and accurate information to enable the Director to ~~make a determination~~ **determine** that **continued operation of the staging pile**:

(1-i) ~~Continued operation of the staging pile~~ Will not pose a threat to human health and the environment; and

(2-ii) ~~Continued operation of the staging pile~~ Is necessary to ensure timely and efficient implementation of remedial actions at the facility.

(2) 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.

(j) *What is the closure requirement for a staging pile located in a previously contaminated area?*

(1) **Within 180 days after the operating term of the staging pile expires, you must** ~~To~~ close a staging pile located in a previously contaminated area of the site ~~you must remove or decontaminate~~ **by removing or decontaminating** all:

(i) Remediation waste;

(ii) Contaminated containment system components; and

(iii) Structures and equipment contaminated with waste and leachate.

~~within 180 days after the expiration of the operating term of the staging pile.~~

(2) You must also decontaminate contaminated subsoils in a manner and ~~pursuant to~~ **according to** a schedule that the Director determines ~~is necessary to~~ **will** protect human health and the environment.

(3) The Director must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.

(k) *What is the closure requirement for a staging pile located in an uncontaminated area?*

(1) Within 180 days after the ~~expiration of the~~ operating term of the staging pile **expires**, you must close a staging pile located in an uncontaminated area of the site ~~in accordance with the applicable requirements of~~ **according to** § 264.258(a) and § 264.111; or **according to** § 265.258(a) and § 265.111.

(2) The Director ~~will~~ **must** include the above requirement in the permit, closure plan, or order in which the staging pile is designated.

(l) *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?*

(1) **To modify a** ~~Modification of a~~ permit, other than a RAP, to incorporate a staging pile or staging pile operating term extension, ~~must occur as follows~~ **either**:

- (i) ~~Through approval by The Director in accordance with~~ **must approve the modification under** the procedures for Agency-initiated permit modifications ~~under in § 270.41;~~ or
- (ii) ~~Upon request of the owner/operator as~~ **You must request** a Class 2 modification ~~according to the procedures under § 270.42 of this chapter.~~
- (2) ~~Modification of~~ **To modify** a RAP to incorporate a staging pile or staging pile operating term extension, ~~must occur according to~~ **you must comply with** the RAP modification requirements under §§ ~~270.91~~ **270.170 and 270.175.**
- (3) ~~Modification of~~ **To modify** a closure plan to incorporate a staging pile or staging pile operating term extension, ~~must occur according to~~ **you must follow** the applicable requirements under § 264.112(c) or § 265.112(c).
- (3-4) ~~Modification of~~ **To modify** an order to incorporate a staging pile or staging pile operating term extension, ~~must occur in accordance with~~ **you must follow** the terms of the order ~~and or pursuant to the applicable EPA procedures~~ **provisions of** at § 270.72(a)(5) or (b)(5).

(m) *Is information **about the staging pile** available to the public?*

The Director ~~shall~~ **must** document the rationale for designating a staging pile or staging pile operating term extension and make ~~such~~ **this** documentation available to the public.

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

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

**Authority:** 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

Section 265.1(b) is amended by revising the phrase immediately after the phrase “standards of this part” in the first sentence to read as follows:

“, and of 40 CFR 264.552, 40 CFR 264.553, and 40 CFR 264.554,”.

## **PART 268 - LAND DISPOSAL RESTRICTIONS**

The authority citation for part 268 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, and 6924.

### **§ 268.2 Definitions applicable in this part.**

\* \* \* \* \*

(c) *Land disposal* means placement in or on the land, except in a corrective action management unit or staging pile, and includes ....

Amend section 268.50 to provide:



(g) The prohibition and requirements of this section do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to section 264.554.

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

### Subpart A - General Information

#### § 270.2 Definitions

These regulations amend Section 270.2 by adding the definition of “Remedial Action Plan (RAP)” as follows:

Remedial Action Plan (RAP) means a special form of RCRA permit that ~~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 of hazardous remediation waste (as defined in § 260.10) at a remediation waste management site.

### Subpart B - Permit Application

Amend section 270.11 to provide:

§ 270.11(d)(i) Any person signing a document under paragraph (a) or (b) of this section ~~shall~~ **must** make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision ~~in accordance with~~ according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(ii) For remedial action plans (RAPs) under Subpart H of this Part, if the operator certifies according to (i) above, then the owner may **choose** to make the following certification ~~in lieu~~ instead of (i) above:

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system **referenced in the operator's certification**, or those persons directly responsible for gathering the information, the information submitted is, upon information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

### Subpart C- Permit Conditions

Amend section 270.42 Appendix 1 to provide:

| Modifications  | Class |
|--|-------|
| D. Closure<br>3. Addition of the following new units to be used temporarily for closure activities:<br>g. Staging<br>piles.....      | 2     |
| N. Corrective Action:<br>3. Approval of a staging pile or staging pile operating term extension pursuant to §<br>264.554.....<br>... | 2     |

Subpart F - Special Forms of Permits

§ 270.68 Remedial Action Plans (RAPs)

Remedial Action Plans (RAPs) are special forms of permits that are regulated under Subpart H of this Part.

Subpart G - Interim Status

§ 270.73(a) Final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under Subpart H of this Part, is made; or...

Subpart H - Remedial Action Plans (RAPs)

This ~~section~~ **subpart** is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this section establishes enforceable legal requirements. For ~~the purposes of this Subpart~~, “I” and “you” refer to the owner/operator.

**GENERAL INFORMATION**

§ 270.80 What is a RAP?

- (a) A RAP is a special form of RCRA permit that you, **as an 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. **A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under § 270.230.**
- (b) The requirements of §§ 270.3 - 270.66 do not apply to RAPs unless ~~they~~ **those requirements for traditional RCRA permits** are specifically required under §§ 270.80 - ~~270.97~~ **270.230**. The definitions in § 270.2 apply to RAPs.
- (c) Notwithstanding any other provision of this Part or Part 124, any document that meets

the requirements of this section constitutes a RCRA permit under RCRA section 3005(c).

(d) A RAP may be:

(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.

(e) 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 obligations under those authorities in any way.

(f) If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

§ ~~270.81~~ **270.85** When do I need a RAP?

(a) Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a RCRA permit under § 270.1, you must either obtain:

(1) A RCRA permit ~~pursuant to~~ **according to** §§ 270.3 - 270.66 of this Part; or

(2) A RAP ~~pursuant to~~ **according to** this Subpart.

(b) Treatment units that ~~utilize~~ **use** combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this Subpart.

(c) 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 to~~ **according to** the requirements of §§ 270.41 or 270.42 ~~in lieu of~~ **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** ~~Upon modification of the permit, the RAP is incorporated as~~ **becomes** 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, revoked or and reissued, terminated or will expire in accordance with following applicable permit requirements of Part 124 and sections 270.1 - 270.66, and the permit.~~ **according to the applicable requirements of §§ 270.40 through 270.42, revoked and reissued according to the applicable requirements of §§ 270.41 and 270.43, terminated according to the applicable requirements of § 270.43, and expire according to the applicable requirements of §§ 270.50 and 270.51.**

§ 270.90 Does my RAP grant **me any rights** or relieve me of any ~~rights or~~ obligations?

The provisions of § 270.4 apply to RAPs. **(Note: The provisions of § 270.4(a) provide you assurance that, as long as you comply with your RAP, EPA and authorized States will consider you in compliance with Subtitle C of RCRA, and will not take enforcement actions against you. However, you should be aware of four exceptions to this provision that are listed in § 270.4.)**

## APPLYING FOR A RAP

### § ~~270.82~~-270.95 How do I apply for a RAP?

To apply for a RAP, you must complete an application, sign it, and submit it to the Director ~~in accordance with~~ **according to** the requirements of this ~~section~~-**Subpart**.

### (a) § 270.100 **Who must obtain a RAP?** ~~Who applies?~~

When a facility or remediation waste management site is owned by one person, but the treatment, storage or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner must also sign the RAP application.

### § 270.105 **Who must sign an application for a RAP?**

**Both the owner and the operator must sign** the RAP application ~~must be signed by both the owner and operator in accordance with~~ **according to** § 270.11. **Both the owner and the operator must also sign the certification required under § 270.11. However, the owner may choose the**, ~~but the owner is only required to certify using the alternate alternative~~ certification under § 270.11(d)(ii) if the operator certifies under § 270.11(d)(i).

### (b) § 270.110 What must I include in my application for a RAP?

You must include the following information in your application for a RAP:

- ~~(1-a)~~ **The name, address, and EPA identification number of the** remediation waste management site ~~name, address, and EPA identification number;~~
- ~~(2-b)~~ **The name, address, and telephone number of the** owner and operator;
- ~~(3-c)~~ **The latitude and longitude of the** site;
- ~~(4-d)~~ **The United States Geological Survey (USGS) or county map showing the** location of **the** remediation waste management site;
- ~~(5-e)~~ **A scaled drawing of the** remediation waste management site showing:
  - ~~(i-1)~~ **The** remediation waste management site boundaries;
  - ~~(ii-2)~~ **Any** significant physical structures; and
  - ~~(iii-3)~~ **The** boundary of all areas on-site where remediation waste is to be treated, stored or disposed;
- ~~(6-f)~~ **A specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This must include**, ~~including~~ information on:
  - ~~(1)~~ **Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;**
  - ~~(2)~~ **An estimate of the quantity of such** ~~these~~ wastes; and
  - ~~(3)~~ **A description of the processes you will use to treat, store, or dispose of this waste to be used for treatment, storage or disposal of such waste including technologies, handling systems, design and operating parameters to be used in treating you will use to treat hazardous remediation wastes prior to disposal in accordance with before disposing of them according to the** LDR standards of 40 CFR Part 268, as applicable;
  - ~~(7-g)~~ **Sufficient** **Enough** information to demonstrate that ~~operation in accordance with~~

operations that follow the provisions in your RAP application will ensure compliance with applicable Part 264, 266, and 268 requirements;

(8-h) Such information as may be necessary to enable the Regional Administrator to carry out his duties under other Federal laws as is required for traditional RCRA permits under § 270.14(b)(20);

(9-i) Any other information the Director decides is necessary for demonstrating compliance with ~~the provisions of this Subpart~~ or for determining any additional RAP conditions that are necessary to protect human health and the environment.

~~(e) § 270.115~~ What if I want to keep ~~such~~ **this** information confidential?

~~In accordance with~~ 40 C.F.R. Part 2 (**Public Information**) **allows** you ~~may to~~ claim as **business-confidential** any or all of the information you submit to EPA ~~pursuant to~~ **under** these regulations. You must assert any such claim at the time that you submit your RAP application or other submissions by stamping the words “confidential business information” on each page containing such information. If you do assert a claim at the time you submit the information, EPA will treat the information ~~in accordance with~~ **according to** the procedures in 40 C.F.R. Part 2-~~(Public Information)~~. If you do not assert a claim at the time you submit the information, EPA may make the information available to the public without further notice to you. EPA will deny any requests for confidentiality of your name and/or address.

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

You must submit your application for a RAP to the Director for approval.

~~(e) § 270.125~~ If I submit my RAP application as part of another document, what must I do?

What must I do if I submit my RAP application as part of another document?

If you submit your application for a RAP as a part of another document ~~as described in § 270.80(d)(2) above~~, you must clearly identify the components of that document that constitute your RAP application.

## GETTING A RAP APPROVED

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

**§ 270.130** What is the process for approving or denying my application for a RAP?

(a) If the Director tentatively finds that your RAP application includes all of the information required by §§ ~~270.82(b)(1)-(9)~~ **§ 270.110** and that your **proposed** remediation waste management activities meet the regulatory standards, the Director will make a tentative decision to approve your RAP application. ~~Upon such tentative decision,~~ The Director will **then** prepare a draft RAP and provide an opportunity for public comment ~~prior to~~ **before** making a final decision on your RAP application, ~~in accordance with~~ **according to** this Subpart.

(b) If the Director tentatively finds that your RAP application does not include all of the information required by § ~~270.82(b)(1)-(9)~~ **270.110** or that your **proposed** remediation

waste management activities do not meet the regulatory standards, the Director may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide **any** additional ~~requested~~ information **the Director requests**, or to correct **any** deficiencies in your RAP application, the Director may make a tentative decision to deny your RAP application. ~~Upon such~~ **After making this** tentative decision, the Director will prepare a notice of intent to deny your RAP application (“notice of intent to deny”) and provide an opportunity for public comment ~~prior to~~ **before** making a final decision on your RAP application, **according to** ~~in accordance with~~ the requirements of this Subpart. The Director may deny the RAP application either in its entirety or in part.

~~§ 270.84~~ **270.135** ~~How will the Director prepare a draft RAP or notice of intent to deny? What must the Director include in a draft RAP?~~

~~Once the Director has tentatively decided to approve or deny your RAP application, the Director~~ **he will** ~~must prepare either a draft RAP or a notice of intent to deny.~~

~~(a)~~ If the Director prepares a draft RAP, it must include the:

~~(1-a)~~ Information required under ~~§ 270.82(b)(1) - (6)~~ **270.110(a) - (f)**; and

~~(2-b)~~ **The following** terms and conditions ~~required under § 270.85:~~

**(1) Terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable Part 264, 266, and 268 requirements (including any recordkeeping and reporting requirements). In satisfying this provision, the Director may incorporate, expressly or by reference, applicable requirements of Parts 264, 266, and 268 of this chapter into the RAP or establish site-specific conditions as required or allowed by these parts;**

**(2) Terms and conditions in § 270.30;**

**(3) Terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in section 270.170; and**

**(4) Any additional terms or conditions that the Director determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP.**

~~(d-c)~~ If the draft RAP is part of another document, as described in § 270.80(d)(2) above, the Director must clearly identify the components of that document that constitute the draft RAP.

~~§ 270.140~~ **270.140** ~~What else must the Director prepare in addition to the draft RAP or notice of intent to deny?~~

~~(b)~~ Once the Director has prepared the draft RAP or notice of intent to deny, he must then:

**(a) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny; and**

**(b) Compile an administrative record, including:**

**(1) The RAP application, and any supporting data furnished by the applicant;**

- (2) The draft RAP or notice of intent to deny;
  - (3) The statement of basis and all documents cited therein (material readily available at the issuing Regional office or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and
  - (4) Any other documents that support the decision to approve or deny the RAP.
- (c) **The Director must make** information contained in the administrative record **must be made** available for review by the public upon request.

~~§ 270.85~~ ~~270.140~~ What terms and conditions must a RAP ~~the Director~~ include ~~in the RAP~~?

~~— A RAP~~ **The Director** must include the following terms and conditions ~~in the RAP~~:

- ~~(a) Terms and conditions necessary to ensure that operation in accordance with the provisions in your RAP will be in compliance~~ **the operating requirements specified in your RAP comply** with applicable Part 264, 266, and 268 requirements (including any recordkeeping and reporting requirements). In satisfying this provision, the Director may incorporate, expressly or by reference, applicable requirements of Parts 264, 266, and 268 of this chapter into the RAP or establish site-specific conditions as required or permitted ~~allowed~~ by these parts;
- ~~(b) Terms and conditions set forth in § 270.30;~~
- ~~(c) Terms and conditions specifying modification, revocation and reissuance, and termination procedures for your RAP, as provided in sections 270.91 and 270.92; and~~
- ~~(d) Any additional terms or conditions that the Director determines are necessary to protect human health and the environment, including any necessary to respond to spills and leaks during use of any units permitted under the RAP.~~

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

(a) The Director must:

- (1) Send notice to you of his intention to approve or deny your RAP application, and send you a copy of the statement of basis;
  - (2) Publish a notice of his intention to approve or deny your RAP application in a major local newspaper of general circulation;
  - (3) Broadcast his intention to approve or deny your RAP application over a local radio station; and
  - (4) Send a notice of his intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.
- (b) The notice required by **paragraph** (a) must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within ~~no fewer than~~ **at least** 45 days.
- (c) The notice required by **paragraph** (a) must include:
- (1) The name and address of the office processing the RAP application;

- (2) The name and address of the RAP applicant, and if different, the remediation waste management site or activity ~~to be regulated by the RAP~~ **will regulate**;
- (3) A brief description of the activity ~~to be regulated by the RAP~~ **will regulate**;
- (4) **The** name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;
- (5) A brief description of the comment procedures in this paragraph, and any other procedures by which the public may participate in the RAP decision;
- (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) Any additional information the Director considers necessary or proper.
- (d) If, within the comment period, the Director receives written notice of opposition to his intention to approve or deny your RAP application and a request for a hearing, the Director must hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Director may also determine on his own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must schedule ~~such a~~ **this** hearing at a location convenient to the nearest population center to the remediation waste management site and give notice ~~in accordance with~~ **according to the requirements in** paragraph (a). ~~Such notice shall~~ **This notice must**, at a minimum, include the information required by paragraph (c) and:
- (1) Reference to the date of any previous public notices relating to the RAP application;
- (2) **The** date, time and place of the hearing; **and**
- (3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§ ~~270.87~~ **270.150** How will the Director make a final decision on my RAP application?

- (a) The Director must 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, **and revise your draft RAP based on those comments, as appropriate.**
- (b) **If the Director determines that your RAP includes the information and terms and conditions required in § 270.135, then he will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.** ~~after he has~~ When the Director has responded to all significant comments, ~~revised your draft RAP based on those comments, as appropriate, and if he has determined that your RAP:~~
- ~~— (1) includes the information required in § 270.82(b)(1) - (6); and~~
- ~~— (2) Includes terms and conditions required by § 270.85.~~ **270.135.** he will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.
- (c) **If the Director determines that your RAP does not include the information required in**



§ 270.135, then he will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied. ~~after he~~ When the Director has responded to all significant comments, and if he has determined that your RAP does not:

- ~~\_\_\_\_\_ (1) Include the information required in § 270.82(b)(1) - (6); or~~
- ~~\_\_\_\_\_ (2) Include terms and conditions required by § 270.85.~~
- ~~\_\_\_\_\_ he will issue a final decision to deny your RAP application, and, in writing, notify you and all commenters on the draft RAP or notice of intent to deny that your RAP has been denied.~~

(d) If the Director's final decision is that the 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, ~~in accordance with~~ **according to** the requirements of this Subpart.

(e) When the Director issues his final RAP decision, he must ~~include reference~~ **refer** to the procedures for appealing the decision under § ~~270.89~~ **270.155**.

(f) ~~Prior to~~ **Before** issuing the final RAP decision, the Director must compile an administrative record. ~~that includes~~ **The administrative record for the final RAP must include** information in the administrative record for the draft RAP (see § ~~270.84(b)~~ **270.140(b)**) and:

- (1) All comments received during the public comment period;
- (2) Tapes or transcripts of any hearings;
- (3) Any written materials submitted at ~~such a~~ **these** hearings;
- (4) The responses to comments;
- (5) Any new material placed in the record since ~~issuance of~~ the draft RAP **was issued**;
- (6) Any other documents supporting the RAP; and
- (7) **A copy of** the final RAP.

Material readily available at the issuing Regional office or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments.

(g) **The Director must make** information contained in the administrative record ~~must be made~~ available for review by the public upon request.

§ ~~270.89~~ **270.155** ~~Can~~ **May** the Regional Administrator's decision to approve or deny my RAP application be administratively appealed?

~~(This requirement is not applicable to~~ **provision is not required for State programs; therefore, State programs may or may not allow for appeal. However programs implemented by EPA will allow for appeal.)**

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the ~~Regional Administrator's~~ **Director's** decision to approve or deny your RAP application to ~~the EPA's~~ Environmental Appeals Board under § 124.19. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals **of RAPs can may**

be made to the same extent as **for** final permit decisions under § 124.15 (or a decision under §270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit). ~~In lieu~~ **Instead** of the notice required under § 124.19(c) and § 124.10, the ~~Regional Administrator~~ **Director** will give public notice of any grant of review of RAPs by the Environmental Appeals Board through the same means used to provide notice under section ~~270.86(a)~~ **270.145**. The notice will include:

- (1) The briefing schedule for the appeal as provided by the Board;
- (2) A statement that any interested person may file an amicus brief with the Board; and
- (3) The information specified in § ~~270.86(c)~~ **270.145(c)**, as appropriate.

(b) This appeal is a prerequisite to seeking judicial review of these EPA actions.

§ ~~270.88~~ **270.160** When does my RAP become effective?

(a) ~~Your RAP becomes effective 30 days after the Director notifies you and all commenters that your RAP is approved unless:~~

- (a) **The Director specifies** a later effective date ~~is specified in the~~ **in his** decision;
- (b) You or another person ~~have~~ **has** appealed your RAP under § ~~270.89~~ **270.155** (if your RAP is appealed, and the request for review is granted under § ~~270.89~~ **270.155**, conditions of your RAP are stayed ~~in accordance with~~ **according to** §124.16); or
- (c) No commenters requested a change in the draft RAP, in which case the RAP ~~shall~~ **becomes** effective immediately ~~upon issuance~~ **when it is issued**.

§ **270.165** When may I begin physical construction of new units permitted under the RAP?

(b) ~~You must not begin physical construction of new units permitted under the RAP for the treatment, storage or disposal~~ **treating, storing or disposing** of hazardous remediation waste ~~prior to~~ **before** receiving a finally effective RAP.

#### **HOW MAY MY RAP BE MODIFIED, REVOKED AND REISSUED, OR TERMINATED?**

§ ~~270.91~~ **270.170** ~~After my RAP is issued, how can my RAP~~ **may it** be modified, after issuance, ~~or revoked and reissued, or terminated?~~

(a) ~~In your RAP, the Director must specify (or incorporate by reference) procedures for future modifications, revocations and reissuance, or terminations of your RAP. These procedures must provide adequate opportunities for public review and comment on any modification, or revocation and reissuance, or termination that would result in a significantly change in your management of your remediation waste, or that otherwise merits public review and comment. If your RAP has been incorporated into a traditional RCRA permit, as allowed under § 270.81-5(c), then the RAP will be modified, or revoked and reissued, or terminated in accordance with following applicable permit requirements of Part 124 and sections 270.1-270.66, and the permit.~~ **according to the applicable requirements of §§ 270.40 through 270.42, revoked and reissued according to the applicable requirements of §§ 270.41 and 270.43, or terminated according to the applicable requirements of § 270.43.**

§ 270.175 For what reasons may the Director choose to modify my final RAP?

- ~~(b-a)~~ The Director may modify your final RAP on his own initiative only if one or more of the following reasons listed in this section exist(s). If one or more of these reasons do not exist, then ~~If cause exists, as defined in this paragraph, or in paragraph (c), the Director may modify your final RAP on his own initiative. If cause does not exist, the Director will not modify your final RAP, except at your request. Causes-Reasons~~ for modification are:
- (1) ~~You made~~ material and substantial alterations or additions to the activity ~~which that~~ justify ~~application of~~ applying different conditions;
  - (2) ~~The Director finds~~ new information that was not available at the time of RAP issuance and would have justified ~~the application of~~ applying different RAP conditions at the time of issuance; ~~or~~
  - (3) The standards or regulations on which the RAP was based have ~~been changed by~~ changed because of statute, through promulgation of new or amended statutes, standards or regulations, or by judicial decision after the RAP was issued;
  - (4) If your RAP includes any schedules of compliance, the Director may find ~~that good~~ cause exists for modification of a ~~reasons to modify your~~ compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which ~~you as~~ the owner/operator ~~has~~ have little or no control and for which there is no reasonably available remedy; ~~or~~
  - (5) ~~You are~~ not in compliance with conditions of ~~the your~~ RAP;
  - (6) ~~the permittee~~ You failed in the application or during the RAP issuance process to disclose fully all relevant facts, or ~~the permittee~~ you misrepresented any relevant facts at the time;
  - (7) ~~a determination by~~ The Director ~~has determined~~ that the activity authorized by your RAP endangers human health or the environment and can only be remedied by RAP ~~modification or revocation and reissuance~~ modifying; ~~or~~
  - (8) ~~You have notified~~ the Director ~~has received notification~~ (as required in the RAP under § 270.30(l)(3)) of a proposed transfer of a RAP.
- ~~(b)~~ Notwithstanding any other provision in this section, when ~~the Director reviews~~ a RAP for a land disposal facility ~~is reviewed by the Director under § 270.92(c)~~ 270.195, ~~the Director~~ he may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements of parts 124, 260 - 266 and 270.
- ~~(d-c)~~ The Director will not reevaluate the suitability of the facility location at the time of RAP modification ~~or revocation and reissuance~~ 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 ~~when the RAP was issued~~.

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

- ~~(e-a)~~ The Director may revoke and reissue your final RAP on his own initiative only if one or more reasons for revocation and reissuance exist(s). If one or more reasons do not exist, then ~~If cause exists, as defined in this paragraph, the Director may modify or revoke and reissue your final RAP on his own initiative. If cause does not exist under this paragraph or paragraph (b), the Director will not modify~~ or revoke and reissue your final

RAP, except at your request. ~~If cause does not exist under this paragraph, the Director will not revoke and reissue your final RAP, except at your request. Causes~~ **Reasons** for modification or revocation and reissuance are:

- ~~(1) the permittee is~~ **You are** not in compliance with conditions of the ~~your~~ **RAP**;
  - ~~(2) the permittee~~ **You** failed in the application or during the RAP issuance process to disclose fully all relevant facts, or the permittee ~~you~~ misrepresented any relevant facts at the time;
  - ~~(3) a determination by The Director~~ **has determined** that the activity authorized by your RAP endangers human health or the environment and can only be remedied by RAP modification or revocation and reissuance ~~modifying or revoking and reissuing; or~~
  - ~~(4)~~ **You have notified** the Director has received notification (as required in the RAP under § 270.30(1)(3)) of a proposed transfer of a RAP. ~~the same as reasons (5) through (8) for RAP modification in § 270.175 if the Director determines that revocation and reissuance of your RAP is appropriate.~~
- ~~(d-b)~~ The Director will not reevaluate the suitability of the facility location at the time of RAP ~~modification or revocation and reissuance~~, 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 ~~when the RAP was issued~~.

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

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

~~(a)~~ In your RAP, the Director must specify (or incorporate by reference) the procedures under which your RAP will expire or be terminated. If your RAP has been incorporated into a traditional RCRA permit, as allowed under § 270.81(c), then the RAP will expire or be terminated in accordance with applicable permit requirements of Part 124 and sections 270.1 - 270.66, and the permit.

~~(b-a)~~ The Director may specify procedures for terminating your final RAP, or denying a renewal application based on **terminate your final RAP on his own initiative, or deny your renewal application for the following reasons:**

- ~~(1) your noncompliance with any condition of your RAP;~~
- ~~(2) your failure in the application or during the RAP issuance process to~~ **fully** disclose fully all relevant facts, or your misrepresentation of any relevant facts at any time;
- ~~(3) a determination that the activity authorized by the RAP endangers human health or the environment and can only be remedied by RAP termination~~ **terminating your RAP. same reasons as (5) through (7) for RAP modifications in § 270.175 if the Director determines that termination of your RAP or denial of your RAP renewal application is appropriate.**

~~§ 270.93-270.190~~ **Can-May** the Director's decision to **approve or deny a modification, revocation and reissuance, or termination of** ~~modify, revoke and reissue, or terminate~~ my RAP be administratively appealed?

~~(This requirement is not applicable to State programs)~~

~~(This provision is not required for State programs, therefore, State programs may or may~~

~~not allow for appeal. However programs implemented by EPA will allow for appeal.)~~

(a) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the Director's decision to ~~modify, revoke and reissue, or terminate~~ **approve a modification, revocation and reissuance, or termination of** your RAP, ~~according to the provisions of~~ **according to** § 270.89-270.155. Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may petition for administrative review only ~~to the extent~~ of the changes from the draft to the final RAP decision.

(b) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the Director's decision to ~~deny~~ a request for modification, revocation and reissuance, or termination to ~~the EPA's~~ Environmental Appeals Board. Any person who did not file comments, or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination may petition for administrative review only ~~to the extent~~ of the changes from the draft to the final RAP decision.

(c) The process for informal appeals of RAPs is as follows:

(1) The person appealing the decision must send a letter to the Environmental Appeals Board. The letter must briefly set forth the relevant facts.

(2) The Environmental Appeals Board has 60 days after receiving the letter to act on it.

(3) If the Environmental Appeals Board does not take action on the letter within 60 days after receiving it, the appeal shall be considered denied.

(d) This informal appeal is a prerequisite to seeking judicial review of these EPA actions.

#### § 270.195 When will my RAP expire?

~~(c)~~ RAPs must be **issued** for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the Director in fixed increments of no more than ten years. In addition, **the Director must review** any RAP for hazardous waste land disposal must be ~~reviewed by the Director~~ five years after the date of issuance or reissuance and **you or the Director must follow the requirements for modifying your RAP** ~~be modified~~ as necessary to assure that you continue to comply with currently applicable requirements of RCRA sections 3004 and 3005.

#### § 270.200 How may I renew my RAP if it is expiring?

~~(d)~~ If you wish to renew your expiring RAP, you must follow the process for **application for and** issuance of RAPs in this Subpart.

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

~~(e)~~ If you have submitted a timely and complete application for a RAP renewal, but the Director, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your **previous** RAP conditions continue in force until the effective date of your new RAP or RAP denial.

## OPERATING UNDER YOUR RAP

### § ~~270.94~~ 270.210 What records must I maintain concerning my RAP?

You are required to keep records of:

- (a) All data used to complete RAP applications and any supplemental information that you submit for a period of at least 3 years from the date the application is signed; and
- (b) Any operating and/or other records the Director requires you to maintain as a condition of your RAP.

### § ~~270.95~~ 270.215 How are time periods in the requirements of this Subpart and my RAP computed?

~~(This provision is not required for State programs, therefore, State programs may or may not compute time in exactly this same manner. However programs implemented by EPA will follow this provision.)~~ (This requirement is not applicable to State programs)

(a) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. (For example, if your RAP specifies that you must close a staging pile within 180 days after the operating term for that staging pile expires, and the operating term expires on June 1, then June 2 counts as day one of your 180 days, and you would have to complete closure by November 28.)

(b) 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. (For example, if you are transferring ownership or operational control of your site, and wish to transfer your RAP, the new owner or operator must submit a revised RAP application no later than 90 days before the scheduled change. Therefore, if you plan to change ownership on January 1, the new owner/operator must submit the revised RAP application no later than October 3, so that the 90<sup>th</sup> day would be December 31.)

(c) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day. (For example, if you wish to appeal the Director's decision to modify your RAP, then you must petition the Environmental Appeals Board within 30 days after the Director has issued the final RAP decision. If the 30<sup>th</sup> day falls on Sunday, then you may submit your appeal by the Monday after. If the 30<sup>th</sup> day falls on July 4<sup>th</sup>, then you may submit your appeal by July 5<sup>th</sup>.)

(d) Whenever a party or interested person has the right to 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. (For example, if you wish to appeal the Director's decision to modify your RAP, then you must petition the Environmental Appeals Board within 30 days after the Director has issued the final RAP decision. However, if the Director if the Director notifies you of his decision by mail, then you may have 33 days to petition the Environmental Appeals Board.)

### § 270.220 How may I transfer my RAP to a new owner or operator?

(e-a) If you wish to transfer your RAP to a new owner or operator, you must ~~modify your~~

~~RAP~~ follow the requirements specified in your RAP for RAP modification to identify the new owner or operator, and incorporate ~~such any~~ other necessary requirements ~~as may be necessary~~. These modifications do not constitute “significant” modifications for purposes of § ~~270.91(a)~~ 270.170. The new owner/operator must submit a revised RAP application no later than 90 days ~~prior to~~ before the scheduled change along with a ~~—A~~ written agreement containing a specific date for transfer of RAP responsibility between ~~the current you~~ and the new permittees ~~must also be submitted to the Director~~.

(b) When a transfer of ownership or operational control occurs, you as the old owner or operator must comply with the applicable requirements of 40 CFR Part 264 Subpart H (Financial Requirements) until the new owner or operator has demonstrated that he is complying with the requirements of that subpart. The new owner or operator must demonstrate compliance with Part 264 Subpart H within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. ~~When the new owner/operator demonstrates~~ Upon demonstration to ~~the Director by the new owner or operator of compliance with Subpart H to the Director,~~ the Director will notify ~~the old owner or operator that he~~ you that you no longer needs to comply with Part 264 Subpart H as of the date of demonstration.

§ ~~270.96~~ 270.225 What must the State or EPA Region report about noncompliance with RAPs? The State or EPA Region must report noncompliance with RAPs ~~in accordance with~~ according to the provisions of § 270.5.

#### OBTAINING A RAP FOR AN OFF-SITE LOCATION

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

- (a) You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective ~~then~~ than the contaminated area or areas in close proximity.
- (b) If the Director determines that an ~~alternate~~ alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the Director may approve a RAP for this alternative location.
- (c) You must request the RAP, and the Director will approve or deny the RAP, according to the procedures and requirements in this Subpart.
- (d) A RAP for an alternative location must also meet the following requirements, which the Director must include in the RAP for such locations:
  - (1) The RAP for the alternative location ~~may~~ must only be issued to the person responsible for the cleanup from which the remediation wastes originated;
  - (2) The RAP is subject to the expanded public participation requirements in §§ 124.31, 124.32, and 124.33;
  - (3) The RAP is subject to the public notice requirements in § 124.10(c);

(4) The site **permitted in the RAP** may not be located within 61 meters or 200 feet of a fault which has had displacement in the Holocene time (~~owners and operators must~~**you must** demonstrate compliance with this standard through the requirements in § 270.14(b)(11)) (See definitions of terms in § 264.18(a));

[Comment: sites ~~which are~~ located in political jurisdictions other than those listed in Appendix VI of Part 264, are assumed to be in compliance with this requirement.]

(e) These ~~alternate~~**alternative** locations ~~retain the following benefits of~~**are** remediation waste management sites, **and retain the following benefits of remediation waste management sites:**

- (1) Exclusion from § 264.101 facility-wide corrective action; and
- (2) Application of § 264.1(j) in lieu of Part 264 Subparts B, C, and D.



PART 271--REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

22. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

23. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1            **Purpose and scope.**  
 \*            \*            \*            \*            \*  
                   (j)            \*            \*            \*

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

| Promulgation date  | Title of Regulation   | Federal Register reference | Effective date  |
|--|---|----------------------------|---|
| [Insert date of publication of final rule in the FEDERAL REGISTER (FR)]. | Hazardous Remediation Waste Management Requirements Final Rule <sup>5</sup> | [Insert FR page numbers].  | [Insert date of 6 months from date of publication of final rule]. |

<sup>5</sup> These regulations implement HSWA only to the extent that they apply to the standards for staging piles **and to §§ 264.1(j) and 264.101(d)**.

24. Section 271.21 is amended to add paragraph (h) to read as follows:

§ 271.21(h) Abbreviated authorization revisions. This abbreviated procedure applies to State Program revisions for the Federal rulemakings listed in Table 1 of this section. The abbreviated procedures are as follows:

(1) An application for a revision of a State's program for the rulemakings listed in Table 1 of this section shall consist of:

(i) A **certification statement** from the State that its laws and regulations provide authority that is equivalent to, and no less stringent than, the designated minor rules or parts of rules specified in Table 1 of this section, and which includes references to the specific statutes, administrative regulations and where appropriate, judicial decisions. State statutes and regulations cited in the **State certification statement** shall be **fully effective lawfully adopted** at the time the **certification statement** is signed **and fully effective by the time the program revisions are**

approved; and

(ii) Copies of all applicable State statutes and regulations.

(2) Within 30 days of receipt by EPA of a State's application for final authorization to implement a rule specified in Table 1 of this section, if the Administrator determines that the application is not complete or contains errors, the Administrator shall notify the State. This notice shall will include a concise statement of the deficiencies which form the basis for this determination. The State shall will address all deficiencies and resubmit the application to EPA for review.

(3) For purposes of this section an incomplete application is one where considered incomplete when:

(i) Copies of applicable statutes or regulations were not included;

(ii) The statutes or regulations relied on by the State to implement the program revisions are not yet in effect lawfully adopted at the time the statement is signed or fully effective by the time the program revisions are approved;

(iii) In the certification statement, the citations to the specific statutes, administrative regulations and where appropriate, judicial decisions are not included or incomplete; or

(iv) The State is not authorized to implement the prerequisite RCRA rules as specified in paragraph (h)(5) of this section.

(4) Within 60 days after receipt of a complete final application from a State for final authorization to implement a rule or rules specified in Table 1 of this section, the Administrator shall publish a notice of the decision to grant final authorization in accordance with the procedures for immediate final publication in paragraph (b)(3) of this section.

(5) To be eligible to use the procedure in this paragraph, a State must be authorized for the provisions which the rule listed in Table 1 to 271.21 amends.

24. Section 271.21 is amended by adding Table 1 to read as follows:

Table 1 to Section 271.21

| Title of Regulation  | Promulgation Date  | Federal Register reference |
|--|--------------------|----------------------------|
| Land Disposal Restrictions Phase II - the Universal Treatment Standards in §§ 268.40 and 268.48 only | September 19, 1994 | 59 FR 47982                |
| Land Disposal Restrictions Phase III   | April 8, 1996      | 61 FR 15660                |
| Land Disposal Restrictions for Wood Preserving Wastes  | May 12, 1997       | 62 FR 26040                |

