

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 259, 261, 266, 267, 270, 271, 300 and 373

[FRL-5224-1]

Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

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**SUMMARY:** The Environmental Protection Agency (EPA) is removing from the Code of Federal Regulations (CFR) several sections of the CFR pertaining to solid waste, hazardous waste, oil discharges and EPA's Superfund program which are no longer legally in effect. Deleting these sections from the CFR will clarify the legal status of the Agency's regulations for both the regulated community and the public.

**EFFECTIVE DATE:** This final rule takes effect on June 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jim O'Leary (202-260-0724), Office of Solid Waste, or Jim Fary (703-603-8899), Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

**SUPPLEMENTARY INFORMATION:**

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995 to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.), and the Deepwater Ports Act (DWPA) (33 U.S.C. 1501 et seq.). Based on this review, EPA is eliminating the following obsolete RCRA, CERCLA and DWPA rules from the CFR. These rules are no longer legally in effect because (1) they implement statutory provisions which

have been repealed, (2) they have expired by their own terms or by the terms of the statute, or (3) they have been vacated (i.e., declared void and of no effect) by a court.

The removal of these rules from the CFR because they are no longer legally in effect is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

## II. Obsolete Rules

### Section 110.11 Discharge at Deepwater Ports

>>>> The portion of the preamble regarding Part 110 has not been included because Part 110 is not required as part of a State's Hazardous Waste Program. <<<<

### Part 259-Standards for the Tracking and Management of Medical Waste

>>>> The portion of the preamble regarding Part 259 has not been included because Part 259 is not required as part of a State's Hazardous Waste Program. <<<<

### Section 261.31 Hazardous Wastes From Non-Specific Sources

On February 6, 1991, EPA issued regulations listing certain wood preserving wastes as hazardous wastes. The Agency was sued on these listings, and in response, temporarily stayed the effective date of its listing decision. See § 261.31(a), footnote 1. This stay expired on May 6, 1992. Accordingly, EPA is removing all references to this stay from the CFR.

### Section 266.104(f) Alternative HC [hydrocarbon] Limit for Furnaces With Organic Matter in Raw Material

On February 21, 1991, EPA issued standards for boilers and industrial furnaces (BIFs) burning hazardous wastes. Among other things, these standards required BIFs to meet one of three alternative emission standards for carbon monoxide. One of these alternative standards-set forth in 40 CFR 266.104(f)-was designed to address situations where organic matter in the non-waste feed to an industrial furnace made it difficult for the facility to meet one of the other two alternatives.

On February 22, 1994, in *Horsehead Resource Development Co. v. Browner*, 16 F.3d 1246 (D.C. Cir. 1994), cert. denied sub nom. *Cement Kiln Recycling Coalition v. Browner*, 115 U.S. 72 (1994), a Federal appeals court ruled that EPA had failed to follow proper rulemaking procedures in issuing this standard and vacated it. Accordingly, EPA is removing this standard and all references to this standard from the CFR.

## Part 267-Interim Standards for Owners and Operators of New Hazardous Waste Land Disposal Facilities.

RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status. RCRA §§ 3005(a) and 3005(e). Prior to 1984, permits could not be issued for a particular management practice unless EPA had promulgated permitting standards for that activity. RCRA § 3005(c)(1).

At the end of 1980, EPA had not yet issued final standards for permitting hazardous waste land disposal facilities. This meant that new land disposal facilities, which could not qualify for interim status <sup>1</sup>, could not be authorized to operate. To address this problem, on February 13, 1981, EPA issued interim permitting standards for new land disposal facilities that could be used to permit new facilities pending the development of final standards.

FOOTNOTE: <sup>1</sup> "Interim status" allows existing facilities that make appropriate filings to continue to operate pending a final permit decision. See RCRA § 3005(e).

By their own terms, these interim standards expired on January 26, 1983, when final permitting standards for land disposal facilities (contained in 40 CFR Part 264, Subparts K-N) became effective. See 40 CFR 267.3.

Accordingly, EPA is removing these regulations from the CFR.

Various Provisions in Parts 270 and 271 Relating to Interim Authorization of State Hazardous Waste Programs.

Under RCRA § 3006, States can be authorized to administer the RCRA hazardous waste program in lieu of EPA. As originally enacted in 1976, RCRA provided for two types of State authorization-interim authorization and final authorization. RCRA §§ 3006(b) and (c). Interim authorization is a temporary authorization and requires that States demonstrate that their program is "substantially equivalent" to EPA's; final authorization is a permanent authorization and requires that States show that their program is "equivalent" to the Federal program and meets other requirements.

In 1984 Congress amended RCRA to limit the availability of interim authorization after January 26, 1986 to requirements and prohibitions mandated by the Hazardous and Solid Waste Amendments of 1984 (HSWA). RCRA § 3006(c)(1). Accordingly, EPA is removing from the CFR all references to interim authorization for non-HSWA requirements (including references to "Phase I" and "Phase II" non-HSWA interim authorization).

Part 300-National Oil and Hazardous Substances Pollution Contingency Plan; Subpart L-Lender Liability Under CERCLA.

>>>> The portion of the preamble regarding Part 300 has not been included because Part 259 is not required as part of a State's Hazardous Waste Program. <<<<

### Section 373.1 (General Requirement)

>>>> The portion of the preamble regarding Part 373 has not been included because Part 259 is not required as part of a State's Hazardous Waste Program. <<<<

### III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures.

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. 553(b). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed in Sections I and II, these rules are no longer legally in effect; thus, withdrawing them from the CFR has no legal impact and merely codifies the current legal status of the rules.

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. 553(d).

IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely reflects their current legal status and thus has no regulatory impact, this action is not a "significant" regulatory action within the meaning of E.O. 12866, and does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, because these rules are no longer legally in effect, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

#### List of Subjects

40 CFR Part 110

Environmental protection, Deepwater ports, Oil pollution.

40 CFR Part 259

Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Labeling, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 261

Hazardous waste, Wood preserving wastes.

40 CFR Part 266

Boilers and industrial furnaces, Hazardous waste.

40 CFR Part 267

Air pollution control, Hazardous waste, Water supply.

40 CFR Parts 270 and 271

Hazardous waste, Intergovernmental relations, Interim authorization.

40 CFR Part 300

Hazardous substances, Lender liability, Superfund.

40 CFR Part 373

Federal buildings and facilities, Hazardous substances, Reporting and recordkeeping requirements, Superfund.

Dated: June 14, 1995.

Elliott P. Laws, Assistant Administrator, Office of Solid Waste and Emergency Response.

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

>>>> Part 110 has not been included because it is not required as part of a State's Hazardous Waste Program. <<<<

>>>> Part 259 has not been included because it is not required as part of a State's Hazardous Waste Program. <<<<

PART 261-[AMENDED]

4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

§ 261.31 [Amended]

5. In § 261.31(a), footnote 1 is removed.

PART 266-[AMENDED]

6. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6934.

7. In § 266.103, paragraph (c)(5) is revised to read as follows:

§ 266.103 Interim status standards for burners.

\* \* \* \* \*

(c) \* \* \*

(5) Special requirements for HC monitoring systems. When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by § 266.104(c) or paragraph (a)(5)(i)(D) of this section, a conditioned gas monitoring system may be used in conformance with specifications provided in appendix IX of this part provided that the owner or operator submits a certification of compliance without using extensions of time provided by paragraph (c)(7) of this section.

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§ 266.104 [Amended]

8. In § 266.104 paragraph (f) is removed, and paragraphs (g), (h) and (i) are redesignated as paragraphs (f), (g) and (h), respectively.

>>> Part 267 has not been included because it has never been required for authorization. This Federal Register article removes Part 267. If any State has analogs to 267 in its regulations, the analogs should be removed because Part 267 is not required as part of a State's Hazardous Waste Program. <<<<

PART 270-[AMENDED]

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

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

11. In § 270.2, the definitions of "Phase I" and "Phase II" are removed and the definition of "Interim Authorization" is revised to read as follows:

§ 270.2 Definitions.

\* \* \* \* \*

"Interim authorization" means approval by EPA of a State hazardous waste program which has met the requirements of section 3006(g)(2) of RCRA and applicable requirements of part 271, subpart B.

\* \* \* \* \*

12. In § 270.10, paragraphs (e)(4), (f)(2) and (g)(1) are revised to read as follows:

§ 270.10 General application requirements.

\* \* \* \* \*

(e) \* \* \*

(4) The owner or operator of an existing hazardous waste management facility may be required to submit part B of their permit application. The State Director may require submission of part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim or final authorization; if not, the Regional Administrator may require submission of Part B. Any owner or operator shall be allowed at least six months from the date of request to submit part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility must submit a part B permit application in accordance with the dates specified in § 270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under this Act that render the facility subject to the requirement to have a RCRA permit must submit a part B application in accordance with the dates specified in § 270.73.

\* \* \* \* \*

(f) \* \* \*

(2) An application for a permit for a new hazardous waste management facility (including both Parts A and B) may be filed any time after promulgation of those standards in part 264, subpart I et seq. applicable to such facility. The application shall be filed with the Regional Administrator if at the time of application the State in which the new hazardous waste management facility is proposed to be located has not received interim or final authorization for permitting such facility; otherwise it shall be filed with the State Director. Except as provided in paragraph (f)(3) of this section, all applications must be

submitted at least 180 days before physical construction is expected to commence.

\* \* \* \* \*

(g) Updating permit applications. (1) If any owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed part B, the owner or operator shall file an amended part A application:

(i) With the Regional Administrator if the facility is located in a State which has not obtained interim authorization or final authorization, within six months after the promulgation of revised regulations under part 261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the State Director, if the facility is located in a State which has obtained interim authorization or final authorization, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in that State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with provisions of § 270.72 for changes during interim status or with the analogous provisions of a State program approved for final authorization or interim authorization. Revised Part A applications necessary to comply with the provisions of § 270.72 shall be filed with the Regional Administrator if the State in which the facility in question is located does not have interim authorization or final authorization; otherwise it shall be filed with the State Director (if the State has an analogous provision).

\* \* \* \* \*

>>>> Part 271 has not been included because it is not required as part of a State's Hazardous Waste Program. <<<<

>>>> Part 300 has not been included because it is not required as part of a State's Hazardous Waste Program. <<<<

>>>> Part 373 has not been included because it is not required as part of a State's Hazardous Waste Program. <<<<

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