

The final proposal contains illustrations and a full description of characters used to distinguish the bobcat from the lynx or other cats. Pelts of these species are sufficiently distinct that there is no reasonable need to regulate bobcat exports in order to effectively control trade in lynx or other species.

Schedule of Events

The Service will send the bobcat delisting proposal to the CITES Secretariat for consideration through the postal procedure. This procedure, set forth in Article XV of CITES, is as follows:

(a) Any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph.

(b) For marine species, (section omitted).

(c) For species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations.

(d) Any Party may, within 60 days of the date on which the Secretariat communicated its recommendations to the Parties under subparagraph (b) or (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information.

(e) The Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible.

(f) If no obligation to the proposed amendment is received by the Secretariat within 30 days of the date

the replies and recommendations were communicated under the provisions of subparagraph (e) of this paragraph, the amendment shall enter into force 90 days later for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

(g) If an objection by any Party is received by the Secretariat, the proposed amendment shall be submitted to a postal vote in accordance with the provisions of subparagraphs (h), (i), and (j) of this paragraph.

(h) The Secretariat shall notify the Parties that notification of objection has been received.

(i) Unless the Secretariat receives the votes for, against, or in abstention from at least one-half of the Parties within 60 days of the date of notification under subparagraph (h) of this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration.

(j) Provided that votes are received from one-half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote.

(k) The Secretariat shall notify all Parties of the result of the vote.

(l) If the proposed amendment is adopted it shall enter into force 90 days after the date of the notification by the Secretariat of its acceptance for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

This notice is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. et seq.; 87 Stat. 884, as amended). It was prepared by Dr. Richard M. Mitchell, Office of the Scientific Authority, telephone (202) 653-5948.

Note.—The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

Dated: December 11, 1981.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

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Estimate Federal Project

Monday
January 11, 1982

Part III

Environmental Protection Agency

Hazardous Waste Management System;
Standards Applicable to Generators of
Hazardous Waste; State Program
Requirements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 262

[SW FRL 1970-3]

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste; State Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 26, 1980 and May 19, 1980, under the Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA) published regulations establishing a system to manage hazardous waste. Those regulations allowed hazardous waste generators to accumulate hazardous waste on-site without obtaining a permit or meeting financial responsibility requirements if they shipped the waste off-site within 90 days. On November 19, 1980, the Agency published an interim final rule which expanded the scope of the provision to include generators who treat, store or dispose of hazardous waste on-site. The final rule published today retains this change.

As a result of public comments, the Agency is making several changes to the interim final rule. These changes (1) Clarify that the provision is applicable to all generators, including those who accumulate hazardous waste for the purpose of use, reuse, recycling and reclamation, (2) remove the requirement for use of DOT containers, (3) revise the labelling and marking requirements for wastes accumulated in containers and tanks; and (4) allow an extension to the 90-day accumulation limit in certain circumstances.

EFFECTIVE DATE: These requirements are effective on January 11, 1982.

ADDRESSES: The official docket for this regulation is located in Room 2636, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

Rolf P. Hill, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460, (202) 755-9150 or the RCRA Hotline at (800) 424-9346 or (202) 554-1404.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the regulations promulgated in February and May 1980, EPA established standards applicable to generators of hazardous waste. [40 CFR Part 262, 45 FR 12722 (February 26, 1980), 45 FR 33140 (May 19, 1980)]. These standards require generators to initiate a manifest to track the movement of hazardous waste, maintain records, and provide proper containers, labels, markings and placards for the transportation of hazardous waste.

Recognizing that many generators would accumulate hazardous waste for a period of time prior to shipping the waste off-site to a hazardous waste management facility, EPA included a provision [40 CFR 262.34] allowing generators to accumulate waste on-site for 90 days or less without having to obtain a RCRA permit for a storage facility under 40 CFR Parts 122 and 264 or to qualify for interim status and comply with the standards in Part 265. EPA's purpose was to reduce the regulations with which a generator must comply during the short accumulation period. However, since holding hazardous waste for a period of 90 days may pose some of the same risks to human health and the environment as long-term storage, § 262.34 contained specific conditions with which the generator had to comply. Section 262.34 required the generator to (1) Ship the waste off-site within 90 days, (2) place the waste in containers or tanks meeting specified technical standards, (3) mark the date accumulation began on the container, (4) properly label and mark the containers, and (5) comply with the regulations concerning preparedness and prevention, contingency plans and emergency procedures. [45 FR 33143.]

On November 19, 1980, [45 FR 76624] the Agency published an interim final rule amending § 262.34. The interim final rule expanded the 90-day accumulation provision to apply not only to hazardous waste which generators send off-site, but also to hazardous waste which they treat, store or dispose on-site. As explained in the preamble to the rule, EPA determined that there was no basis for imposing substantially different requirements on the two groups of generators.

Today's rule makes the November 19, 1980 action final, and makes additional amendments to § 262.34 in response to comments received from the public. Conforming amendments to § 262.10 and Part 123 are also being made to clarify the effect of these amendments on the purpose, scope and applicability of Part 262 and on state RCRA program requirements.

II. Response to Comments

1. Accumulation for on-site management.

The interim final rule published November 19, 1980 expanded the applicability of the accumulation time provision in § 262.34 to include generators who treat, store or dispose of their hazardous waste on-site. The Agency solicited comments on whether the accumulation time limit for generators who subsequently manage on-site should be less than 90 days. The vast majority of commenters favored the interim final rule and none of them supported shortening the 90-day period.

In support of the rule, several commenters pointed out the similarities between the time needed to accumulate wastes for economical shipment off-site and the time needed to accumulate wastes for efficient on-site management. Commenters also noted that a more restrictive time period for accumulation prior to on-site management would be inequitable to those generators who currently manage their waste on-site. This inequity could discourage on-site management of wastes in favor of shipping off-site. Moreover, increased off-site shipments would increase the likelihood of transportation-associated incidents resulting in the release of hazardous wastes. The Agency agrees with the comments and maintains the 90-day provision for generators who subsequently manage on-site.

2. Modification to accumulation areas.

One effect of the interim final amendment (and the final amendments being promulgated today) is to give generators who treat, store, or dispose of wastes on-site greater latitude to enlarge and relocate temporary waste accumulation areas. These amendments allow 90-day accumulation areas at interim status facilities to be governed by § 262.34. Without these amendments, those areas would be subject to the restrictions on modifications to a facility during interim status in 40 CFR 122.23(c). Several commenters supported the amendment for this reason.

3. Use, reuse, recycling, and reclamation.

Many of the commenters who supported the interim final rule also suggested that the provision address situations where waste is accumulated prior to being used, reused, recycled, or reclaimed. Through an oversight, the November 19, 1980 provision did not apply to these situations. The Agency had fully intended to allow such activity and therefore is amending the interim final rule so that § 262.34(a) applies

when a generator accumulates hazardous wastes in tanks or containers for subsequent use, reuse, recycling or reclamation. (It should be noted that wastes which are not sludges and which are defined as hazardous solely because they exhibit one or more of the characteristics described in Part 261 Subpart C are not subject to regulation under Parts 262-265 when used, reused, recycled or reclaimed. 40 CFR 261.6(a). The regulatory status of these wastes is thus unaffected by today's action.)

4. Use of DOT containers.

Commenters noted that § 262.34 requires that containers used for 90-day accumulation must meet the Department of Transportation (DOT) packaging requirements referred to in § 262.30. Some commenters felt that applying this requirement to generators who subsequently manage their waste on-site at interim status facilities is inequitable since Part 265 Subpart I does not require that DOT containers must be used for storage during interim status.

The Agency agrees that this situation is inequitable. Originally, § 262.34 applied only to hazardous waste accumulated for off-site shipment. Therefore, it seemed sensible to require use of the containers that would be used in transportation during the 90-day accumulation period as an added but not burdensome means of ensuring safe containment during accumulation. For the reasons expressed by the commenters, the Agency no longer believes that the requirement for DOT containers during accumulation is appropriate. However, EPA also believes it is important to ensure that minimum health and safety standards are met in temporary storage situations. Thus, EPA is replacing the DOT container requirement with a provision requiring compliance with Part 265 Subpart I, the interim status standards for storage in containers. Subpart I contains general good-housekeeping requirements and does not stipulate the type of container to be used. These requirements should provide adequate protection to human health and the environment while giving generators greater latitude in their choice of containers.

The amendment to § 262.34(a) requiring compliance with Part 265 Subpart I applies to all generators, whether or not the waste will subsequently be managed on or off-site. In this case, EPA believes that waste accumulated for on-site management should be regulated equally with waste accumulated for off-site shipment until such waste is transported, or offered for transport. Of course, prior to shipment off-site, generators must comply with

§ 262.30 for packaging hazardous wastes for transportation. Generators may still wish to use DOT containers during the 90-day period, and this amendment does not preclude them from doing so. In fact, EPA encourages generators who ship waste off-site to accumulate the waste in the same containers in which it will be shipped, and thereby avoid transferring wastes among containers. This is a good management practice which helps to prevent releases to the environment, and inadvertent mixture of incompatible wastes.

5. Labelling and marking requirements.

Some commenters expressed the opinion that containers used for accumulation of wastes for subsequent on-site management should not have to be labelled and marked in conformance with §§ 262.31 and 262.32. They claimed that the §§ 262.31 and 262.32 standards are necessary for transportation purposes but are not appropriate when the containers stay on site.

Other commenters questioned whether the labelling and marking requirements for waste to be shipped off-site apply when 90-day accumulation begins, or just prior to transportation.

Originally, § 262.34 applied only to hazardous waste accumulated for off-site shipment. Under those circumstances, EPA believes that a requirement that the same labels and markings that would be used in transportation be used during the 90-day period would enable easier identification of hazardous wastes and not be unduly burdensome. For the reasons expressed by the commenters, the Agency has since concluded that the requirement for DOT labelling and DOT/EPA marking during the 90-day period should be changed. However, EPA also believes it is important to ensure that minimum health and safety standards are met in temporary storage situations. EPA is therefore deleting the DOT labelling and DOT/EPA marking provisions from § 262.34(a) and adding a requirement that generators must clearly mark containers and tanks with the words, "Hazardous Waste". This simple identification procedure will ensure that persons at the generating site are aware of which containers and tanks hold hazardous waste, and will help an EPA inspector to determine a generator's compliance with the other requirements of § 262.34.

One commenter expressed the opinion that the DOT labelling requirement should be maintained for all accumulation of hazardous waste in containers because these labels contain useful information about the contained wastes. The information facilitates

communication among personnel and effectuates emergency response to discharge incidents. The Agency agrees that having a detailed description of the contents of each container is a good management practice for some industries, but believes that the specificity of the labelling should be determined by each generator according to the needs of his facility. For regulatory purposes, EPA finds that it is unnecessary to require DOT labelling during 90-day accumulation. Of course, prior to shipment, generators must comply with §§ 262.31 and 262.32 for labelling and marking hazardous waste for transportation. Generators may still wish to use DOT labels and DOT/EPA markings during the 90-day period, and this amendment does not preclude them from doing so.

Section 262.34(a), as promulgated on May 19, 1980, also requires generators to mark containers with the date upon which each period of accumulation begins. This requirement is not changed by today's action.

6. Extension to 90-Day Limit.

Several commenters expressed concern regarding the 90-day accumulation time limit in special cases where unforeseen, temporary and uncontrollable circumstances result in wastes being accumulated for longer than 90 days. They have argued that although a generator may make arrangements to have his wastes sent to a management facility within 90 days, occasional circumstances may prevent him from doing so. Examples given have included facility refusals of waste shipments, transporter delays and labor strikes.

Section 262.34(b), as promulgated May 19, 1980, stated that a generator who accumulates hazardous waste for longer than 90 days is operating a storage facility and must have a permit or interim status. A generator who accumulated waste beyond the 90-day time limit due to uncontrollable circumstances and did not have a permit or interim status would be in technical violation of the regulations. He would then be required to obtain a permit to store hazardous waste, even though he may intend to store for only a few days or a week.

To avoid this situation, some generators submitted RCRA permit applications to EPA in order to qualify for interim status as storage facilities. Their intent was to be legally covered if an unexpected event forced them to accumulate wastes beyond 90 days. EPA has discouraged "protective filings" in other situations [see November 19, 1980 45 FR 76635] and believes generators

should not have to file permit applications or comply with the administrative standards of Part 265 simply because they may exceed the 90-day accumulation limit. Rather, the Agency believes the problem identified by the commenters should be addressed directly. Accordingly, EPA is amending § 262.34(b) to allow an extension to the 90-day accumulation provision on a case-by-case basis. This amendment, promulgated in final form today, allows generators to receive an extension of up to 30 days for accumulating wastes if the extension is necessary because of unforeseen, temporary and uncontrollable circumstances. This extension would be issued at the discretion of the EPA Regional Administrator upon the request of the generator. After such extension terminates, the generator must comply with the permitting and facility requirements of 40 CFR Parts 122, 264 and 265 if he continues to store the waste.

Generators are encouraged to withdraw protective filings by contacting their EPA Regional Offices.

7. Duration of accumulation period.

The Agency has also received comments from the regulated community concerning the duration of the 90-day accumulation period. Some commenters claim that the 90-day period is too short for many generators to accumulate enough hazardous waste for economical management on-site or shipment off-site. They believe that generators should be allowed to accumulate hazardous waste without a permit or interim status until a quantity is accumulated which is economical to recycle, transport, or otherwise manage. Although today's action provides for extensions to the 90-day period under extenuating circumstances, it does not address the general adequacy of the 90-day limit. However, the Agency is studying this issue as part of an inclusive Regulatory Impact Analysis of EPA's standards for hazardous waste storage. The analysis will assess the environmental benefits and economic costs of the present rule and assess regulatory alternatives. The analysis is scheduled for completion by Fall of 1982. At that time, the Agency will determine whether and how to adjust the 90-day limit.

8. Satellite accumulation.

In the preamble to the interim final amendment to § 262.34 EPA discussed and solicited comments on the issue of "satellite accumulation areas". Commenters had pointed out that within a manufacturing complex, there may be dozens of places where hazardous wastes are collected during daily operation prior to being taken to a

loading dock or other central accumulation area. Currently, the regulations governing accumulation of hazardous waste do not differentiate between accumulation at satellite areas within a generating facility and accumulation at a central loading dock; thus, § 262.34 applies to both situations. Comments received on the issue stated that the requirements of § 262.34 are more stringent than necessary for the accumulation and very short-term storage of wastes at areas where the wastes are generated and initially accumulated, often in small containers, prior to movement to the more centralized on-site accumulation areas. The Agency plans to publish a proposed rule to address this subject.

III. Related topics

1. Conforming Amendments to Parts 262, 123.

Today's final amendments to § 262.34 affect the activities of generators who treat, store or dispose of hazardous waste on-site. Accordingly, EPA must change § 262.10 (Purpose, scope and applicability) and Part 123 (State Program Requirements) to reflect this change. The Agency is therefore amending § 262.10(b) to include § 262.34 as one of the sections with which such generators must comply, and amending §§ 123.34 and 123.128 to modify the requirements for interim and final authorization of state RCRA programs in line with today's changes to § 262.34.

2. Empty Tanks.

Questions have been raised concerning the applicability of the 90-day accumulation provision to accumulation in tanks. As with accumulation in containers, the 90-day period begins the moment the generator first places hazardous wastes in an "empty" tank. The generator then must remove all wastes from his tank within 90 days from the time he first places wastes in the "empty" tank. A tank will be considered "empty" when its contents have been drained to the fullest extent possible. Since many tank designs do not allow for complete drainage due to flanges, screens or syphons, it is not expected that 100% of the wastes will always be removed. As general guidance, a tank should be considered empty when the generator has left the tank's drainage system open until a steady, continuous flow has ceased.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons

handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. However, since this amendment has been in effect in substantially the same form since November of 1980, EPA believes it would make little sense to delay the effective date. Accordingly, EPA is making this final rule effective upon promulgation.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The interim final rule published November 19, 1980 on this subject was the result of comments received from the regulated community concerning the May 19, 1980 rules. Comments received from industry on the November 19 action indicated that the rule would reduce regulatory burden. Today's rule makes the November 19 action final and adds several minor amendments on the subject. These additional changes are being made largely in response to comments received from the regulated community on the interim final rule. The Agency concludes that these amendments are not "major" because they reduce the overall cost of EPA's hazardous waste regulations, do not cause an increase in prices for consumers, industries or other groups, and do not have an adverse effect on the economy of the United States.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all final regulations that may have a significant impact on a substantial number of small entities. While this regulation may have a significant impact on a substantial number of small entities, the effect of this regulation would be to reduce the cost and paperwork requirements of EPA's hazardous waste management regulations to hazardous waste generators, including those which are small businesses, small organizations, and small governmental jurisdictions. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601, that this final rule will not have a significant economic impact on a substantial number of small entities.

Dated: December 28, 1981.

Anne M. Gorsuch,
Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for Part 123 reads as follows:

Authority: Secs. 2002, 3002, and 3006, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6912 through 6925.

2. In § 123.34, paragraph (c) is revised to read as follows:

§ 123.34 Requirements for generators of hazardous waste.

(c) The State Program must require that generators who accumulate hazardous waste for short periods of time comply with requirements that are equivalent to the requirements for accumulating hazardous wastes for short periods of time under 40 CFR 263.34.

3. In § 123.128, paragraph (b)(4) is revised to read as follows:

§ 123.128 Program requirements for interim authorization for Phase 1.

(b) * * *

(4) The State Program must require that generators who accumulate hazardous waste for short periods of time do so in a manner that does not

present a hazard to human health or the environment.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

4. The authority citation for Part 262 reads as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, and 3005, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6905, 6912, 6922, 6923, 6924, 6925.

5. In § 262.10, paragraph (b) is revised to read as follows:

§ 262.10 Purpose, scope and applicability.

(b) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this Part with respect to that waste: Section 262.11 for determining whether or not he has a hazardous waste, § 262.12 for obtaining an EPA identification number, § 262.34 for accumulation of hazardous waste, § 262.40 (c) and (d) for recordkeeping, § 262.43 for additional reporting and if applicable, § 262.51 for farmers.

6. Section 262.34 is amended by revising paragraphs (a) and (b) to read as follows:

§ 262.34 Accumulation time.

(a) A generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that:

(1) The waste is placed in containers and the generator complies with Subpart I of 40 CFR Part 265, or the waste is placed in tanks and the generator complies with Subpart J of 40 CFR Part 265 except § 265.193;

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265 and with § 265.16.

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Part 264 and 265 and the permit requirements of 40 CFR Parts 122 unless he has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

[FR Doc. 82-656 Filed 1-8-82; 8:45 am]

BILLING CODE 6560-30-M

THE STATE OF ALABAMA
IN SENATE,
January 15, 1901.
REPORT
OF THE
COMMISSIONER OF THE
LAND OFFICE,
FOR THE YEAR
1900.
ALBANY, N. Y.:
J. B. LIPPINCOTT COMPANY,
PUBLISHERS.
1901.

Monday
January 11, 1982

Register

Part IV

Environmental Protection Agency

**Standards for Owners and Operators of
Hazardous Waste Disposal Facilities;
Interim Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SW-FRL 1999-2]

Standards for Owners and Operators of Hazardous Waste Disposal Facilities; Interim Rule

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendments to rule.

SUMMARY: EPA is today promulgating, in interim final form, amendments to the ground-water monitoring standards for certain hazardous waste surface impoundments used to neutralize corrosive wastes. The amendments provide for a waiver of these standards for any surface impoundment that (1) Contains wastes which are hazardous only because they exhibit the corrosivity characteristic and contains no other hazardous wastes, and (2) is demonstrated to rapidly neutralize the wastes so that there is no potential for migration of any hazardous waste out of the impoundment.

The purpose of today's amendment is to relieve owners and operators of neutralization surface impoundments from having to monitor ground water in cases where such monitoring is not necessary to protect human health and the environment. Since the compliance date for the ground-water monitoring requirements is November 19, 1981, today's limited exception to those requirements is being made effective immediately.

DATE: Today's interim final amendments are effective January 11, 1982.

EPA will accept public comments on the proposed amendments until March 9, 1982.

ADDRESSES: Comments on the interim final amendments should be sent to Deneen Shrader, Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket as follows: "Docket No. 3004, Amendment of § 265.90(c)". Requests for a hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460.

The official docket for this regulation is located in Room 2636, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to

4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

The RCRA hazardous waste hotline, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 800/424-9346 (382-3000 in Washington, D.C.). For specific information on this amendment, contact Barry Stoll, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-9116.

SUPPLEMENTARY INFORMATION:

I. Purpose and Content of the Amendment

On May 19, 1980, EPA promulgated hazardous waste regulations in 40 CFR Parts 260-265 (45 FR 33066 *et seq.*) which established, in conjunction with earlier regulations promulgated on February 26, 1980 (45 FR 12721 *et seq.*), the principal elements of the hazardous waste management program under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6921, *et seq.*). Part 265 of the May 19 regulations set forth standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities during the "interim status" period. Subpart F (§§ 265.90-265.94) of those regulations established ground-water monitoring interim status standards applicable to land disposal facilities.

Section 265.90(c) provides that all or part of the ground-water monitoring requirements of Subpart F may be waived if the owner or operator demonstrates that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells or to surface water. The demonstration must be in writing and must be certified by a qualified geologist or geotechnical engineer and must establish the potential for migration of the hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer and from that aquifer to water supply wells or surface water. This demonstration must be based on an evaluation of several hydrogeological factors set forth in the regulation.

As presently written, this self-implementing waiver provision is available only when hydrogeological factors reduce the migration potential to a low probability.¹ The regulation does

not allow consideration of the disposed wastes' characteristics and the facility design to be used as a basis for reducing monitoring requirements. At the time that the regulation was promulgated, EPA was concerned that the state of knowledge about hazardous wastes and facility designs was not sufficiently certain to justify reductions in the basic monitoring system during interim status. (See 45 FR 33192, May 19, 1980.)

Since the time it promulgated § 265.90(c), EPA has become aware of one situation where it is appropriate to allow a waiver of ground-water monitoring requirements to be based upon consideration of the facility and the wastes disposed in the facility. Several industries operate surface impoundments which contain no hazardous wastes except corrosive wastes which themselves are hazardous only due to their corrosivity. In some cases, these wastes may be placed in the impoundment together with large volumes of non-hazardous wastes. In some of these cases, particularly where active mechanical mixing is performed in the impoundment, it may be reliably demonstrated that the corrosive wastes are neutralized shortly after being placed in the impoundment. In such cases, there may be no potential for any hazardous wastes to migrate out of the impoundment.

For the neutralization surface impoundments described above, EPA believes that it makes little sense to monitor the ground water beneath the facilities. Therefore, EPA is amending § 265.90 to provide a waiver of Subpart F requirements for these types of facilities upon a demonstration that there is no potential for migration of hazardous wastes out of the facility. The demonstration would have to show, based on consideration of the corrosive wastes and the impoundment, that the corrosive wastes will be neutralized before they migrate out of the facility. The demonstration must be certified by a professional qualified to make this type of technical demonstration, rather than necessarily by a geologist or geotechnical engineer (as required in § 265.90(c)).

It may be that there are types of facilities other than neutralization surface impoundments for which reliable demonstrations can in some instances be made, based upon consideration of the nature of the wastes and of the facility, to show that there is no potential for migration of hazardous waste or hazardous waste

¹ As explained in the preamble to § 265.90(c) (45 FR 33192, May 19, 1980), a complete waiver of all Subpart F monitoring requirements is available only when the owner or operator can demonstrate that

there is no potential for migration to water supply wells or surface water.

constituents from the facility. EPA welcomes information (including detailed data) on such facilities.

II. Promulgation of Today's Amendment in Interim Final Form

The compliance date for the existing Subpart F ground-water monitoring requirements is November 19, 1981. Unless today's amendment is promulgated and takes effect immediately, owners or operators of neutralization surface impoundments would be required to comply immediately with the Subpart F requirements even when they can demonstrate that those requirements are unnecessary to protect human health and the environment. Such a result would be contrary to the public interest. Therefore, EPA believes that good cause exists to promulgate today's amendment in interim final form without prior notice and comment.

EPA invites public comment on today's interim final rule. Consistent with its duty to fully consider all comments, EPA will promulgate a final rule as soon as possible after the close of the public comment period.

III. Effective date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations take effect six months after their promulgation. The purpose of this statutory requirement is to allow persons affected by the regulations sufficient lead time to comply with major new regulatory requirements. Today's amendment, however, does not impose a new requirement but rather relaxes an existing requirement. Therefore, the Agency believes it is consistent with the intent of Section 3010(b) to make today's amendment immediately effective.

IV. Regulatory Analysis

Section 3(b) of Executive Order 12291, 40 FR 13193 (February 19, 1981), requires

EPA to initially determine whether a rule that it intends to propose or issue is a major rule and to prepare regulatory impact analyses for all major rules.

EPA has determined that the amendment being promulgated today is not a major rule. As discussed above, this amendment will allow a waiver of ground-water monitoring requirements under a limited set of circumstances. Accordingly, a Regulatory Impact Analysis is not being prepared for this amendment.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The information collection requirements in this interim final rule will be submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act of 1980. The information requirements or recordkeeping in this interim final rule will not take place until it has been cleared by the Office of Management and Budget. If OMB approves, the information collection requirements will take effect as set forth in this interim final rule. If not, EPA will revise the information requirements (and this rule if appropriate) to comply with OMB's determination.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory analysis. The additional waiver opportunity created by this amendment should, if anything, reduce the burden of compliance with the hazardous waste disposal regulations for small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse impact on a substantial number of small entities.

Dated: December 28, 1981.

Anne M. Gorsuch,
Administrator.

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

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

1. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

2. Section 265.90 is amended by adding paragraph (e) to read as follows:

§ 265.90 Applicability.

(e) The ground-water monitoring requirements of this Subpart may be waived with respect to any surface impoundment that (1) Is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under § 261.22 of this Chapter or are listed as hazardous wastes in Subpart D of Part 261 of this Chapter only for this reason, and (2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration must establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

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