
Colorado Hazardous Waste Regulations

Part 265

Standards for Owners and Operators of **Interim** Hazardous Waste Treatment, Storage and Disposal Facilities

(Amended 8/16/11, effective 9/30/11)

To obtain more information regarding the
Colorado Hazardous Waste Regulations,
please contact the Hazardous Materials and
Waste Management Division at 303-692-3300.

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

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THAN 0.1 Y/X

Subpart A -- General

§ 265.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish minimum state standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in § 265.1080(b), the standards of this part, and of § 264.552, § 264.553, and § 264.554 of these regulations apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under Section 3005(e) of RCRA [42 U.S.C. § 6925(e)] and Parts 99 and 100 of these regulations until either a permit is issued or until applicable Part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by Section 3010(a) of RCRA [42 U.S.C. § 6930(a)] and/or failed to file Part A of the permit application as required by Parts 99 and 100 of these regulations. These standards apply to all treatment, storage and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this part or Part 261 of these regulations.*

* These provisions, with regard to off-site disposal facilities, will be applied in accordance with C.R.S. 1973, 25-15-101 et seq.

(c) The requirements of this part do not apply to:

(1) [RESERVED]

(2) [RESERVED]

(3) The owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

(4) [Reserved]

(5) The owner or operator of a facility permitted, licensed, or registered by the State of Colorado to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by § 261.5 of these regulations;

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(6) The owner or operator of a facility managing recyclable materials described in § 261.6(a)(2), (3), and (4) of these regulations (except to the extent they are referred to in Part 279 or Subparts C, D, F, or G of Part 267 of these regulations).*

*Note: Hazardous wastes burned in boilers and industrial furnaces are also subject to the requirements of Part 264, Subpart O and Part 265, Subpart H of these regulations.

(7) A generator accumulating waste on-site in compliance with § 262.34 of these regulations, except to the extent the requirements are included in § 262.34 of these regulations.

(8) A farmer disposing of waste pesticides from the farmer's own use in compliance with § 262.70 of these regulations.

(9) The owner or operator of a totally enclosed treatment facility, as defined in § 260.10.

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in § 260.10 of these regulations, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in § 268.40 of these regulations, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in § 265.17(b).

(11)(i) Except as provided in paragraph (c)(11)(ii) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (c)(11)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part.

(iv) In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less.

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(13) The addition of absorbent material to waste in a container (as defined in § 260.10 of these regulations) or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and §§ 265.17(b), 265.171, and 265.172 are complied with.

(14) Universal waste handlers and universal waste transporters (as defined in § 260.10) handling the wastes listed below. These handlers are subject to regulation under Part 273 of these regulations, when handling the below listed universal wastes.

- (i) Batteries as described in § 273.2(a) of these regulations;
- (ii) Pesticides as described in § 273.2(b) of these regulations;
- (iii) Mercury-containing devices as described in § 273.2(c) of these regulations;
- (iv) Aerosol cans as described in § 273.2(d) of these regulations;
- (v) Lamps as described in § 273.2(e) of these regulations; and
- (vi) Electronic devices and electronic components as described in § 273.2(f) of these regulations.

(d) The following hazardous wastes must not be managed at facilities subject to regulation under this Part.

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

- (i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;
- (ii) The waste is stored in tanks or containers;
- (iii) The waste is stored or treated in waste piles that meet the requirements of § 264.250(c) as well as all other applicable requirements of Subpart L of this part;
- (iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in § 265.352; or
- (v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in § 265.383.

(e) The requirements of this part apply to owners or operators of all facilities which treat, store or dispose of hazardous waste referred to in Part 268 and the Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards.

§ 265.2 through § 265.3 [Reserved]

§ 265.4 Imminent hazard action.

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to section CRS 1973, 25-15-301(4)(a).

§ 265.5 Interim status corrective action orders.

(a) Facilities that are or were subject to the requirements of Part 265 shall not have releases of hazardous waste or hazardous constituents into the environment which may be or are harmful to human health and the environment. Whenever on the basis of any information, the Department determines that there is or has been a release of hazardous waste or hazardous constituents into the environment from an interim status facility, the Department may issue an order under authority of Section 25-15-308(2), C.R.S. requiring corrective action or such other response measure as it deems necessary to protect human health or the environment. Any order issued under this section may include a suspension or revocation of interim status authorization to operate if the Department has reasonable grounds to believe and finds that the owner and operator has been guilty of a deliberate and willful violation resulting in such releases, or that the public health, safety or environment imperatively requires emergency action. Any order issued under this section shall state with reasonable specificity the nature of the required corrective action or other response measure and shall specify a time for compliance. Any order issued under this section may designate or establish corrective action management units or temporary units in accordance with §§ 264.552 and 264.553.

Subpart B -- General Facility Standards

§ 265.10 Applicability

The regulations in this subpart apply to owners and operators of all hazardous waste facilities, except as § 265.1 provides otherwise.

§ 265.11 Identification number.

Every facility owner or operator must apply to the Department for an EPA identification number using the Colorado Hazardous Waste Notification Form. Upon receiving the request, the Department will forward an EPA assigned EPA Identification number to the Facility.

§ 265.12 Required notices.

(a)(1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

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- (2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Part 262, Subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.
- (b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this part and Parts 99 and 100 of these regulations.

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under § 265.113(d), he/she must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this part and Part 268 of these regulations.

(2) The analysis may include data developed under Part 261 of these regulations, and existing published or documented data on the hazardous waste or on waste generated from similar processes.

[Comment: For example, the facility's records of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with paragraph (a)(1) of this section. The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part of the information required by paragraph (a)(1) of this section, except as otherwise specified in § 268.7(b) and (c). If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this section.]

(3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous wastes, if applicable, under § 265.113(d) has changed; and

(ii) For off-site facilities, when the results of the inspection required in paragraph (a)(4) of this section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(4) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which he/she will carry out to comply with paragraph (a) of this section. He/she must keep this plan at the facility. At a minimum, the plan must specify:

(1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under § 265.113(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

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- (2) The test methods which will be used to test for these parameters;
- (3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:
 - (i) One of the sampling methods described in Appendix I of Part 261 of these regulations; or
 - (ii) An equivalent sampling method.
- (4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date;
- (5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and
- (6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.200, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034(d), 265.1063(d), 265.1084 and 268.7.
- (7) For surface impoundments exempted from land disposal restrictions under § 268.4(a) of these regulations, the procedures and schedule for:
 - (i) The sampling of impoundment contents;
 - (ii) The analysis of test data; and,
 - (iii) The annual removal of residues which are not delisted under § 260.22 of these regulations or which exhibit a characteristic of hazardous waste and either:
 - (A) Do not meet the applicable treatment standards of Part 268, Subpart D; or
 - (B) Where no treatment standards have been established:
 - (1) Such residues are prohibited from land disposal under § 268.32 or RCRA 3004(d); or
 - (2) Such residues are prohibited from land disposal under § 268.33(f).
- (8) For owners and operators seeking an exemption to the air emission standards of Subpart CC of this part in accordance with § 265.1083:
 - (i) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

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(ii) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the hazardous waste, if the waste is received from offsite, that is used as the basis for knowledge of the waste.

(c) For off-site facilities, the waste analysis plan required in paragraph (b) of this section must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:

- (1) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and
- (2) The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.
- (3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

§ 265.14 Security.

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his/her facility, unless:

- (1) Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility, and
- (2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this part.

(b) Unless exempt under paragraphs (a)(1) and (a)(2) of this section, a facility must have:

- (1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or
- (2)(i) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and
- (ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

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(c) Unless exempt under paragraphs (a)(1) and (a)(2) of this section, a sign with the legend, "Danger - Unauthorized Personnel Keep Out," must be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend must be written in English and in any other language predominant in the area surrounding the facility and must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

§ 265.15 General inspection requirements.

(a) The owner or operator must inspect his/her facility for malfunctions and deterioration, operator errors, and discharges which may be causing - or may lead to: (1) Release of hazardous waste constituents to the environment or (2) 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.

(b)(1) The owner or operator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) He/she must keep this schedule at the facility.

(3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090 of this part, where applicable.

(5) **{Reserved}**

(c) The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

[RESERVED]

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(d) The owner or operator must record inspections in an inspection log or summary. He/she must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

§ 265.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction and on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures, (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

- (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
- (ii) Key parameters for automatic waste feed cut-off systems;
- (iii) Communications or alarm systems;
- (iv) Response to fires or explosions;
- (v) Response to ground-water contamination incidents; and
- (vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility. Employees must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

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- (d) The owner or operator must maintain the following documents and records at the facility:
- (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
 - (2) A written job description for each position listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;
 - (3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;
 - (4) Records that document that the training or job experience required under paragraphs (a),(b), and (c) of this section has been given to, and completed by, facility personnel.
- (e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

§ 265.17 General requirements for ignitable, reactive, or incompatible wastes.

- (a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.
- (b) Where specifically required by other sections of this part, the treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, must be conducted so that it does not:
- (1) Generate extreme heat or pressure, fire or explosion, or violent reaction;
 - (2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

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- (3) Produce uncontrolled flammable fumes, or gases in sufficient quantities to pose a risk of fire or explosions;
- (4) Damage the structural integrity of the device or facility containing the waste; or
- (5) Through other like means threaten human health or the environment.

§ 265.18 Location standards.

The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited.

§ 265.19 Construction quality assurance program.

(a) **CQA program.** (1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with §§ 265.221(a), 265.254, and 265.301(a). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program must address the following physical components, where applicable:

- (i) Foundations;
- (ii) Dikes;
- (iii) Low-permeability soil liners;
- (iv) Geomembranes (flexible membrane liners);
- (v) Leachate collection and removal systems and leak detection systems; and
- (vi) Final cover systems.

(b) **Written CQA plan.** Before construction begins on a unit subject to the CQA program under paragraph (a) of this section, the owner or operator must develop a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include:

- (1) Identification of applicable units, and a description of how they will be constructed.
- (2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

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(3) A description of inspection and sampling activities for all unit components identified in paragraph (a)(2) of this section, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under § 265.73.

(c) **Contents of program.** (1) The CQA program must include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in paragraph (a)(2) of this section;

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under §§ 264.221, 264.251, and 264.301 of these regulations.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of §§ 264.221(c)(1), 264.251(c)(1), and 264.301(c)(1) of these regulations in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of §§ 264.221(c)(1), 264.254(c)(1), and 264.301(c)(1) of these regulations in the field.

(d) **Certification.** The owner or operator of units subject to § 265.19 must submit to the Department by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of §§ 265.221(a), 265.254, or 265.301(a). The owner or operator may receive waste in the unit after 30 days from the Department's receipt of the CQA certification unless the Department determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification must be furnished to the Department upon request.

Subpart C -- Preparedness and Prevention

§ 265.30 Applicability.

The regulations in this subpart apply to owners and operators of all hazardous waste facilities, except as § 265.1 provides otherwise.

§ 265.31 Maintenance and operation of facility.

(a) Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or water which could threaten human health or the environment.

(b) Facilities which are not provided with fire protection services by a fire protection district or municipal fire department must be maintained and operated in accordance with a plan for providing their own fire protection and prevention which has been approved by the Department and which meets the following requirements:

- (1) The plan shall provide for adequate fire protection and prevention for the facility based upon the location and construction of the facility, and based upon the kinds and amounts of hazardous wastes generated, treated, stored, or disposed of at the facility.
- (2) The plan shall specify the required equipment and the required availability and training of facility personnel.
- (3) The plan shall be based upon the provisions of the Uniform Fire Code, the National Fire Code, the Uniform Building Code, and 29 CFR, Chapter XVII, part 1910, subpart L, Fire Protection.
- (4) Before submitting the plan to the Department for review, the facility shall have the plan reviewed and approved by a registered professional engineer experienced in fire protection.
- (5) The approved plan shall become a part of the facility's contingency plan when a contingency plan is required.

§ 265.32 Required equipment.

All facilities must be equipped with the following, **unless** none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

- (a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.
- (b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;
- (c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
- (d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

§ 265.33 Testing and maintenance of equipment.

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

§ 265.34 Access to communications or alarm system.

- (a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, **unless** such a device is not required under § 265.32.
- (b) If there is ever just one employee on the premises while the facility is operating, he/she must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, **unless** such a device is not required under § 265.32.

§ 265.35 Required aisle space.

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

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§ 265.37 Arrangements with local authorities.

(a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his/her facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, local departments of health, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record and comply with § 265.31(b).

Subpart D -- Contingency Plan and Emergency Procedures

§ 265.50 Applicability.

The regulations in this subpart apply to owners and operators of all hazardous waste facilities, except as § 265.1 provides otherwise.

§ 265.51 Purpose and implementation of contingency plan.

(a) Each owner or operator must have a contingency plan for his/her facility. The contingency plan must be 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, surface or ground water.

(b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

§ 265.52 Content of contingency plan.

(a) The contingency plan must describe the actions facility personnel must take to comply with §§ 265.51 and 265.56 in response to fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, surface or ground water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR, Chapter I, Part 112, or 40 CFR Part 300, or some other emergency or contingency plan, he/she need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator may develop one contingency plan which meets all regulatory requirements. The Department recommends that the plan be based on the National Response Teams' Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

(c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to § 265.37.

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(g) The plan must: (1) identify the fire protection district responsible for providing fire protection services to the facility, or state that the facility is not within a fire protection district but is operating under its own fire protection plan that has been approved by the Department, and (2) identify the local emergency planning committee for the area in which the facility is located.

(h) The plan must include the location of all hazardous waste accumulation areas at the facility, as defined in paragraphs (a) and (c)(1) of § 262.34 of these regulations.

§ 265.53 Copies of contingency plan.

A copy of the contingency plan and all revisions to the plan must be:

- (a) Maintained at the facility; and
- (b) Submitted to all local police departments, fire departments, hospitals, local emergency planning committees, and State and local emergency response teams that may be called upon to provide emergency services.

§ 265.54 Amendment of contingency plan.

The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

- (a) Applicable regulations are revised;
- (b) The plan fails in an emergency;
- (c) The facility changes - in its design, construction, operation, maintenance, or other circumstances - in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;
- (d) The list of emergency coordinators changes; or
- (e) The list of emergency equipment changes.

§ 265.55 Emergency coordinator.

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a specified period of time) with the responsibility for 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.

§ 265.56 Emergency procedures.

- (a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his/her designee when the emergency coordinator is on call) must immediately:
 - (1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
 - (2) Notify appropriate State or local agencies with designated response roles as described in the contingency plan.

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- (b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. He/she may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.
- (c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).
- (d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he/she must report his/her findings as follows:
- (1) If his/her assessment indicates that evacuation of local areas may be advisable, he/she must immediately notify appropriate local authorities. He/she must be available to help appropriate officials decide whether local areas should be evacuated; and
 - (2) He/she must immediately notify either the government official designated as the on-scene coordinator for that geographical area (in the applicable regional contingency plan under Part 1510 of 40 CFR), or the National Response Center (using their 24 hour toll free number 800/424-8802). The report must include:
 - (i) Name and telephone number of reporter;
 - (ii) Name and address of facility;
 - (iii) Time and type of incident (e.g., release, fire);
 - (iv) Name and quantity of material(s) involved, to the extent known;
 - (v) The extent of injuries, if any; and
 - (vi) The possible hazards to human health, or the environment, outside the facility.
- (e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.
- (f) If the facility stops operations in response to a fire, explosion or release the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever, this is appropriate.

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(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(h) The emergency coordinator must ensure that, in the affected areas(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The owner or operator must notify the Department, and appropriate local authorities, that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.

(j) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he/she must submit a written report on the incident to the Department. The report must include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident (e.g., fire, explosion);

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

Subpart E -- Manifest System, Recordkeeping, and Reporting

§ 265.70 Applicability.

(a) The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

(b) The revised manifest form and procedures in §§ 260.10, 261.7, 265.70, 265.71, 265.72, and 265.76 of these regulations shall not apply until September 5, 2006. The manifest form and procedures contained in §§ 260.10, 261.7, 265.70, 265.71, 265.72, and 265.76 of these regulations at the time of the May 2006 rulemaking hearing shall be applicable until September 5, 2006.

§ 265.71 Use of manifest system.

(a) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

- (i) Sign and date, by hand, each copy of the manifest;
- (ii) Note any discrepancies in the manifest (as defined in § 265.72(a)) on each copy of the manifest;
- (iii) Immediately give the transporter at least one copy of the manifest;
- (iv) Within 30 days of delivery, send a copy of the manifest to the generator; and
- (v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

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(b) If a facility receives, from a rail transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his/her agent, must:

- (1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;
- (2) Note any significant discrepancies (as defined in § 265.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;
- (3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);
- (4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and
- (5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of these regulations.

(d) Within three (3) working days of the receipt of a shipment subject to Part 262, Subpart H, the owner or operator of the facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

§ 265.72 Manifest discrepancies.

(a) Manifest discrepancies are:

- (1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

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(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for “empty” containers set forth in § 261.7(b) of these regulations.

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for “empty” containers set forth in § 261.7(b) of these regulations, the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 262.20(a) of these regulations and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space in Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

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- (4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).
 - (5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.
 - (6) Sign the Generator's/Offerrer's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.
 - (7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.
- (f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with § 262.20(a) of these regulations and the following instructions:
- (1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.
 - (2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.
 - (3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.
 - (4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).
 - (5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.
 - (6) Sign the Generator's/Offerrer's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

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- (7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6) and (8) of this section.
- (8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).
- (g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in § 261.7(b) of these regulations after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

§ 265.73 Operating record.

- (a) The owner or operator must keep a written operating record at his/her facility.
- (b) The following information must be recorded, as it becomes available, and maintained in the operating record for five years unless noted below:
- (1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to Part 265. This information must be maintained in the operating record until closure of the facility;
 - (2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area using a three-dimensional grid system. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;
- [**Comment:** See §§ 265.119, 265.279, and 265.309 for related requirements.]
- (3) Records and results of waste analysis, waste determinations, and trial tests performed as specified in §§ 265.13, 265.200, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034, 265.1063, 265.1084, 268.4(a), and 268.7 of these regulations.

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(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in § 265.56(j);

(5) Records and results of inspections as required by § 265.15(d) (except these data need be kept only three years);

(6) Monitoring, testing or analytical data, and corrective action where required by Subpart F of this part and by §§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.224, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this part. Maintain in the operating record for five years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility.

[**Comment:** As required by § 265.94, monitoring data at disposal facilities must be kept throughout the post-closure period.]

(7) All closure cost estimates under § 266.12 and, for disposal facilities, all post-closure cost estimates under § 266.13 must be maintained in the operating record until closure of the facility.

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to 40 CFR § 268.5, monitoring data required pursuant to a petition under 40 CFR § 268.6, or a certification under 40 CFR § 268.8, and the applicable notice required by a generator under § 268.7 of these regulations. All of this information must be maintained in the operating record until closure of the facility.

(9) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or 40 CFR § 268.8;

(10) For an on-site treatment facility the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or 40 CFR § 268.8;

(11) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or 40 CFR § 268.8;

(12) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or 40 CFR § 268.8.

(13) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or 40 CFR § 268.8; and

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(14) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 or 40 CFR § 268.8.

(15) Monitoring, testing or analytical data, and corrective action where required by §§ 265.90, 265.93(d)(2), and 265.93(d)(5), and the Certification as required by § 265.196(f) must be maintained in the operating record until closure of the facility.

§ 265.74 Availability, retention, and disposition of records.

(a) All records, including plans, required under this part must be furnished upon request, and made available at all reasonable times for inspection, by any duly designated officer, employee, or representative of the Department.

(b) The retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Department.

(c) A copy of records of waste disposal locations and quantities under § 265.73(b)(2) must be submitted to the Department and local land authority upon closure of the facility (see § 265.119).

§ 265.75 Biennial report.

The owner or operator must prepare and submit a single copy of an biennial report to the Department, by March 1 of each even numbered year or at the request of the Director. The biennial report must be submitted on Department form 8700-13B. The report must cover facility activities during the previous calendar year and must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) Monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2), where required;

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- (g) The most recent closure cost estimate under § 266.12, and, for disposal facilities, the most recent post-closure cost estimate under § 266.13; and
- (h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- (i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.
- (j) The certification signed by the owner or operator of the facility or his/her authorized representative.

§ 265.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e) of these regulations, and if the waste is not excluded from the manifest requirement by these regulations, then the owner or operator must prepare and submit a letter to the Department within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

- (1) The EPA identification number, name, and address of the facility;
 - (2) The date the facility received the waste;
 - (3) The EPA identification number, name, and address of the generator and the transporter if available;
 - (4) A description and the quantity of each unmanifested hazardous waste the facility received;
 - (5) The method of treatment, storage, or disposal for each hazardous waste;
 - (6) The certification signed by the owner or operator of the facility or his/her authorized representative; and
 - (7) A brief explanation of why the waste was unmanifested, if known.
- (b) [Reserved]

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§ 265.77 Additional reports.

In addition to submitting the biennial report and unmanifested waste reports described in §§ 265.75 and 265.76, the owner or operator must also report to the Department:

- (a) Releases, fires, and explosions as specified in § 265.56(j);
- (b) Ground-water contamination and monitoring data as specified in §§ 265.93 and 265.94;
- (c) Facility closure as specified in § 265.115;
- (d) As otherwise required by Subparts AA, BB, and CC of this part; and
- (e) Annual report information for the purpose of assessing facility annual fees in accordance with § 100.31 of these regulations.

Subpart F -- Ground-Water Monitoring

§ 265.90 Applicability.

- (a) The owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a ground-water monitoring program capable of determining the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility, except as § 265.1 provides otherwise.
- (b) Except as paragraph (d) of this section provides otherwise, the owner or operator must install, operate, and maintain a ground-water monitoring system which meets the requirements of § 265.91, and must comply with §§ 265.92-265.94. This ground-water monitoring program must be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well.
- (c) [Reserved]
- (d) If an owner or operator assumes (or knows) that ground-water monitoring of indicator parameters in accordance with §§ 265.91 and 265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under § 265.93(b), he/she may, install, operate, and maintain an alternate ground-water monitoring system (other than the one described in §§ 265.91 and 265.92). If the owner or operator decides to use an alternate ground-water monitoring system he/she must:
 - (1) Submit to the Department a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate groundwater monitoring system;

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- (2) Initiate the determinations specified in § 265.93(d)(4);
 - (3) Prepare and submit a written report in accordance with § 265.93(d)(5);
 - (4) Continue to make the determinations specified in § 265.93(d)(4) on a quarterly basis until final closure of the facility; and
 - (5) Comply with the recordkeeping and reporting requirements in § 265.94(b).
- (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 these regulations or are listed as hazardous wastes in Subpart D of Part 261 of these regulations 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.
- (f) The Director may replace all or part of the requirements of this subpart applying to a regulated unit (as defined in § 264.90 of these regulations), with alternative requirements developed for groundwater monitoring set out in an approved closure or post-closure plan or in an enforceable document (as defined in § 100.10(d) of these regulations), where the Director determines that:
- (1) A regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and
 - (2) It is not necessary to apply the requirements of this subpart because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of § 264.101(a) of these regulations.

§ 265.91 Ground-water monitoring system.

- (a) A ground-water monitoring system must be capable of yielding ground-water samples for analysis and must consist of:
- (1) Monitoring wells (at least one) installed hydraulically upgradient (i.e., in the direction of increasing static head) from the limit of the waste management area. Their number, locations, and depths must be sufficient to yield ground-water samples that are:

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(i) Representative of background ground-water quality in the uppermost aquifer near the facility; and

(ii) Not affected by the facility; and

(2) Monitoring wells (at least three) installed hydraulically downgradient (i.e., in the direction of decreasing static head) at the limit of the waste management area. Their number, locations, and depths must ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

§ 265.92

- (3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified ground-water scientist and establish that:
- (i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and
 - (ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and
 - (iii) The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.
 - (iv) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.
- (b) Separate monitoring systems for each waste management component of a facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.
- (1) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary (perimeter).
 - (2) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by an imaginary boundary line which circumscribes the several waste management components.
- (c) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated, and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed with a suitable material (e.g., cement grout or bentonite slurry) to prevent contamination of samples and the ground water.

§ 265.92 Sampling and analysis.

- (a) The owner or operator must obtain and analyze samples from the installed ground-water monitoring system. The owner or operator must develop and follow a ground-water sampling and analysis plan. He/she must keep this plan at the facility. The plan must include procedures and techniques for:
- (1) Sample collection;

- (2) Sample preservation and shipment;
 - (3) Analytical procedures; and
 - (4) Chain of custody control
- (b) The owner or operator must determine the concentration or value of the following parameters in ground-water samples in accordance with paragraphs (c) and (d) of this section:
- (1) Parameters characterizing the suitability of the ground water as a drinking water supply, as specified in Appendix III.
 - (2) Parameters establishing ground-water quality:
 - (i) Chloride
 - (ii) Iron
 - (iii) Manganese
 - (iv) Phenols
 - (v) Sodium
 - (vi) Sulfate
 - (3) Parameters used as indicators of ground-water contamination:
 - (i) pH
 - (ii) Specific Conductance
 - (iii) Total Organic Carbon
 - (iv) Total Organic Halogen
- (c)(1) For all monitoring wells, the owner or operator must establish initial concentrations or values of all parameters specified in paragraph (b) of this section. He/she must do this quarterly for one year.
- (2) For each of the indicator parameters specified in paragraph (b)(3) of this section, at least four replicate measurements must be obtained for each sample. The initial background arithmetic mean and variance must be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from all upgradient wells during the first year.

§ 265.93

(d) After the first year, all monitoring wells must be sampled and the samples analyzed with the following frequencies:

(1) Samples collected to establish ground-water quality must be obtained and analyzed for the parameters specified in paragraph (b)(2) of this section at least annually.

(2) Samples collected to indicate ground-water contamination must be obtained and analyzed for the parameters specified in paragraph (b)(3) of this section at least semi-annually.

(e) Elevation of the ground-water surface at each monitoring well must be determined each time a sample is obtained.

§ 265.93 Preparation, evaluation, and response.

(a) The owner or operator must prepare an outline of a ground-water quality assessment program. The outline must describe a more comprehensive ground-water monitoring program (than that described in § 265.91 and § 265.92) capable of determining:

(1) Whether hazardous waste or hazardous waste constituents have entered the ground water:

(2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the ground water; and

(3) The concentrations of hazardous waste or hazardous waste constituents in the ground water.

(b) For each indicator parameter specified in § 265.92(b)(3), the owner or operator must calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with § 265.92(d)(2), and compare these results with the parameters initial upgradient arithmetic mean. The comparison must consider individually each of the wells in the monitoring system, and must use the Student's t-test at the 0.01 level of significance (see Appendix IV) to determine statistically significant increases (and decreases, in the case of pH) over initial background.

(c)(1) If the comparisons for the upgradient wells made under paragraph (b) of this section show a significant increase (or pH decrease), the owner or operator must submit this information in accordance with § 265.94(a)(2)(ii).

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(2) If the comparisons for downgradient wells made under paragraph (b) of this section show a significant increase (or pH decrease), the owner or operator must then immediately obtain additional ground-water samples from those downgradient wells where a significant difference was detected, split the samples in two, and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(d)(1) If the analyses performed under paragraph (c)(2) of this section confirm the significant increase (or pH decrease), the owner or operator must provide written notice to the Department - within seven days of the date of such confirmation - that the facility may be affecting ground-water quality.

(2) Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop and submit to the Department a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment program at the facility.

(3) The plan to be submitted under § 265.90(d)(1) or paragraph (d)(2) of this section must specify:

(i) The number, location, and depth of wells;

(ii) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;

(iii) Evaluation procedures, including any use of previously gathered ground-water quality information; and

(iv) A schedule of implementation.

(4) The owner or operator must implement the ground-water quality assessment plan which satisfies the requirements of paragraph (d)(3) of this section, and, at a minimum determine;

(i) Whether hazardous wastes or hazardous waste constituents have entered the ground water;

(ii) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the ground water; and

(iii) The concentrations of the hazardous waste or hazardous waste constituents in the ground water.

§ 265.94

(5) The owner or operator must make his/her first determination under paragraph (d)(4) of this section as soon as technically feasible, and, within 15 days after that determination, submit to the Department a written report containing an assessment of the ground-water quality.

(6) If the owner or operator determines, based on the results of the first determination under paragraph (d)(4) of this section, that no hazardous waste or hazardous waste constituents from the facility have entered the ground-water, then he/she may reinstate the indicator evaluation program described in § 265.92 and paragraph (b) of this section. If the owner or operator reinstates the indicator evaluation program, he/she must so notify the Department in the report submitted under paragraph (d)(5) of this section.

(7) If the owner or operator determines, based on the first determination under paragraph (d)(4) of this section, that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he/she:

(i) Must continue to make the determinations required under paragraph (d)(4) of this section on a quarterly basis until final closure of the facility, if the ground-water quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under paragraph (d)(4) of this section, if the ground water quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of this subpart, any ground-water quality assessment to satisfy the requirements of § 265.93(d)(4) which is initiated prior to final closure of the facility must be completed and reported in accordance with § 265.93(d)(5).

(f) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(4), at least annually the owner or operator must evaluate the data on ground-water surface elevations obtained under § 265.92(e) to determine whether the requirements under § 265.91(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that § 265.91(a) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the ground-water monitoring system into compliance with this requirement.

§ 265.94 Recordkeeping and reporting.

(a) Unless the ground-water is monitored to satisfy the requirements of § 265.93(d)(4), the owner or operator must:

(1) Keep records of the analyses required in § 265.92(c) and (d), the associated ground-water surface elevations required in § 265.92(e), and the evaluations required in § 265.93(b) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

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(2) Report the following ground-water monitoring information to the Department:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in § 265.92(b) for each ground-water monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III.

(ii) Annually: concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these parameters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1). During the active life of the facility, this information must be submitted no later than March 1 following each calendar year.

(iii) No later than March 1 following each calendar year: results of the evaluation of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

(b) If the ground water is monitored to satisfy the requirements of § 265.93(d)(4), the owner or operator must:

(1) Keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of § 265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Annually, until final closure of the facility, submit to the Department a report containing the results of his/her ground-water quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water during the reporting period. This information must be submitted no later than March 1 following each calendar year.

Subpart G -- Closure and Post Closure

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111 through 265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

§ 265.111

(b) Sections 265.116 through 265.120 (which concern post-closure care) apply to the owners and operators of:

- (1) All hazardous waste disposal facilities;
- (2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in § 265.228 and § 265.258;
- (3) Tank systems that are required under § 265.197 to meet requirements for landfills; and
- (4) Containment buildings that are required under § 265.1102 to meet the requirement for landfills.

(c) Section 265.121 applies to owners and operators of units that are subject to the requirements of § 100.10(d) of these regulations and are regulated under an enforceable document (as defined in § 100.10(d)).

(d) The Director may replace all or part of the requirements of this subpart (and the unit-specific standards in § 265.111(c) of these regulations) applying to a regulated unit (as defined in § 264.90 of these regulations), with alternative requirements for closure set out in an approved closure or post-closure plan, or in an enforceable document (as defined in § 100.10(d) of these regulations), where the Director determines that:

- (1) A regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release, and
- (2) It is not necessary to apply the closure requirements of this subpart (and/or those referenced herein) because the alternative requirements will protect human health and the environment, and will satisfy the closure performance standard of § 265.111 (a) and (b).

§ 265.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

- (a) Minimizes the need for further maintenance, and
- (b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and

§ 265.112

(c) Complies with the closure requirements of this subpart including, but not limited to, the requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102.

§ 265.112 Closure plan; amendment of plan.

(a) Written plan.

By May 19, 1981, or within six months after the effective date of the rule that first subjects a facility to provisions of this section, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with § 265.115, a copy of the most current plan must be furnished to the Department upon request, including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Department who is duly designated by the Director.

(b) Content of plan.

The plan must identify the steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

- (1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 265.111; and
- (2) A description of how final closure of the facility will be conducted in accordance with § 265.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and
- (3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing or disposing of all hazardous waste, identification of and the type(s) of off-site hazardous waste management units to be used, if applicable; and
- (4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and
- (5) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and
- (6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.); and
- (7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under § 266.14 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans.
- (8) For facilities where the Director has applied alternative requirements at a regulated unit under §§ 265.90(f), 265.110(d), and/or 266.10(d), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

(c) Amendment of plan.

The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan must submit a written request to the Director to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the Director.

- (1) The owner or operator must amend the closure plan whenever:
 - (i) Changes in operating plans or facility design affect the closure plan, or
 - (ii) There is a change in the expected year of closure, if applicable, or
 - (iii) In conducting partial or final closure activities, unexpected events require a modification of the closure plan.
 - (iv) The owner or operator requests the Director to apply alternative requirements to a regulated unit under §§ 265.90(f), 265.110(d), and/or 266.10(d).
- (2) The owner or operator must amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with § 265.310.
- (3) An owner or operator with an approved closure plan must submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must submit the modified plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with § 265.310. If the amendment to the plan is a Class 2 or 3 modification according to the criteria in § 100.63, the modification to the plan will be approved according to the procedures in § 265.112(d)(4).
- (4) The Department may request modifications to the plan under the conditions described in paragraph (c)(1) of this section. An owner or operator with an approved closure plan must submit the modified plan within 60 days of the Department's request, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment to the plan is a Class 2 or 3 modification according to the criteria in § 100.63 the modification to the plan will be approved according to the procedures in § 265.112(d)(4).

(d) Notification of partial closure and final closure.

(1) The owner or operator must submit the closure plan to the Department at least 180 days prior to the date on which he/she expects to begin closure of the first surface impoundment, waste pile, land treatment or landfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the Department at least 45 days prior to the date on which he/she expects to begin partial or final closure of a boiler or industrial furnace. The owner or operator must submit the closure plan to the Department at least 45 days prior to the date on which he/she expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the Department in writing at least 60 days prior to the date on which he/she expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. Owners or operators with approved closure plans must notify the Department in writing at least 45 days prior to the date on which he/she expects to begin partial or final closure of a boiler or industrial furnace. Owners or operator with approved closure plans must notify the Department in writing at least 45 days prior to the date on which he/she expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

(2) The date when he/she "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he/she has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Department may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 265.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Department that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he/she has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Department may approve an extension to this one-year limit.

(3) The owner or operator must submit his/her closure plan to the Department no later than 15 days after:

(i) Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

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(ii) Issuance of judicial decree, State compliance order, State corrective action order, or final order under Section 3008 under RCRA [42 U.S.C. § 6928] to cease receiving hazardous waste or close.

(4) The Director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He/she will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Director will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department does not approve the plan, the Department shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statements. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, this modified plan becomes the approved closure plan. The Department must assure that the approved plan is consistent with §§ 265.111 through 265.115 and the applicable requirements of Subpart F of this part, §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(e) Removal of wastes and decontamination or dismantling of equipment.

Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment, except for the regulated units, in a manner consistent with § 265.111 (the closure standard) before or after notification of partial or final closure.

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Department may approve a longer period if the owner or operator demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

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(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

(B) There is a reasonable likelihood that he/she or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He/she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Department may approve an extension to the closure period if the owner or operator demonstrates that:

(1)(i) The partial or final closure activities will, of necessity, take him/her longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

(B) There is a reasonable likelihood that he/she or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He/she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

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(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows:

(1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and

(2) The demonstrations in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Department may allow an owner or operator to receive non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator submits an amended part B application, or a part B application, if not previously required, and demonstrates that:

(i) The unit has the existing design capacity as indicated on the part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit or with the facility design and operating requirements of the unit or facility under this part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

(2) The part B application includes an amended waste analysis plan, ground-water monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 265.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The part B application is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

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(4) The part B application and the demonstrations referred to in paragraphs (d)(1) and (d)(2) of this section are submitted to the Department no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes, or no later than 90 days after the effective date of this rule in Colorado, whichever is later.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o)(2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the part B application:

(i) A contingent corrective measures plan; and

(ii) A plan for removing hazardous wastes in compliance with paragraph (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Department may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements in Subpart F of this part, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Department to implement corrective measures in less than one year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

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(5) During the period of corrective action, the owner or operator shall provide semi-annual reports, or more frequently as may be provided in the corrective action plan to the Department that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(6) The Department may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in paragraph (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Department determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section it shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadline in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Department receives no written comments, the decision will become final five days after the close of the comment period. The Department will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Department receives written comments on the decision, it shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Department determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

§ 265.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of, or decontaminated unless otherwise specified in §§ 265.197, 265.228, 265.258, 265.280, or 265.310. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of Part 262 of these regulations.

§ 265.115 Certification of closure and submission of draft environmental covenant.

(a) Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Department, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for closure under § 266.14(1).

(b) Within 30 days of the completion of final closure of a unit described in § 265.110(b), the owner or operator must submit to the Department, by registered mail, a draft environmental covenant in accordance with C.R.S. §§ 25-15-317 et seq.

§ 265.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which:

(a) States the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subpart G regulations; and

(b) References the property's environmental covenant.

§ 265.117 Post-closure care and use of property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of §§ 265.117 through 265.120 must begin after completion of closure of the unit and continue for 30 years after that date. It must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subpart F, K, L, M, and N of this part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this part.

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(2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Department may:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Department finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if the Department finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Department may require, at partial and final closure, continuation of any of the security requirements of § 265.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless:

(1) The Department finds that the disturbance is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment, or is necessary to reduce a threat to human health or the environment; and

(2) If applicable, the environmental covenant is modified or terminated accordingly.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 265.118.

§ 265.118 Post-closure plan; amendment of plan.

(a) **Written plan.**

By May 19, 1981, the owner or operator of a hazardous waste disposal unit must have a written post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure must prepare a post-closure plan and submit it to the Department within 90 days of the date that the owner or operator or Department determines that

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the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of §§ 265.117 through 265.120.

(b) Until final closure of the facility, a copy of the most current post-closure plan must be furnished to the Department upon request, including request by mail. In addition, for facilities without approved post-closure plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Department who is duly designated by the Director. After final closure has been certified, the person or office specified in § 265.118(c)(3) must keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of this section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M and N of this part during the post-closure care period;

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M and N of this part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M and N of this part;

(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period;

(4) For facilities subject to § 265.121, provisions that satisfy the requirements of § 265.121(a)(1) and (3);

(5) For facilities where the Director has applied alternative requirements at a regulated unit under §§ 265.90(f), 265.110(d), and/or 266.10(d), either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements; and

(6) A draft environmental covenant.

(d) Amendment of plan.

The owner or operator may amend the post-closure plan at any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure plan must submit a written request to the Department to authorize a change to the approved plan. The written request must include a copy of the amended post-closure plan for approval by the Department.

(1) The owner or operator must amend the post-closure plan whenever:

(i) Changes in operating plans or facility design affect the post-closure plan, or

(ii) Events which occur during the active life of the facility, including partial and final closures, affect the post-closure plan.

(iii) The owner or operator requests the Director to apply alternative requirements to a regulated unit under §§ 265.90(f), 265.110(d), and/or 266.10(d).

(2) The owner or operator must amend the post-closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan.

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- (3) An owner or operator with an approved post-closure plan must submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post-closure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with § 265.228(b) or § 265.258(a) is required to close as a landfill in accordance with § 265.310, the owner or operator must submit a post-closure plan within 90 days of the determination by the owner or operator or Department that the unit must be closed as a landfill. If the amendment to the post-closure plan is a Class 2 or 3 modification according to the criteria in § 100.63, the modification to the plan will be approved according to the procedures in § 265.118(f).
- (4) The Department may request modifications to the plan under the conditions described in paragraph (d)(1) of this section. An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days of the request from the Department. If the amendment to the plan is a Class 2 or 3 modification according to the criteria in § 100.63, the modifications to the post-closure plan will be approved in accordance with the procedures in § 265.118(f). If the Department determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure plan for approval to the Department within 90 days of the determination.
- (e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his/her post-closure plan to the Department at least 180 days before the date he/she expects to begin partial or final closure of the first hazardous waste disposal unit. The date he/she "expects to begin closure" of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the post-closure plan to the Department no later than 15 days after:
- (1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or
 - (2) Issuance of a State compliance order, State corrective action order, final decree under Section 3008 of RCRA or judicial decree to cease receiving wastes or close.

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(f) The Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications to the plan no later than 30 days from the date of the notice. The Department will also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department does not approve the plan, the owner or operator will be provided with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, this modified plan becomes the approved post-closure plan. The Department must ensure that the approved post-closure plan is consistent with §§ 265.117-265.120. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(g) The post-closure plan and length of the post-closure care period may be modified any time prior to the end of the post-closure care period in either of the following two ways:

(1) The owner or operator or any member of the public may petition the Department to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(A) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment or re-use techniques indicate that the facility is secure), or

(B) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

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(ii) These petitions will be considered by the Department only when they present new and relevant information not previously considered by the Department. Whenever the Department is considering a petition, it will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. The Department will also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) After considering the comments, the Department will issue a final determination, based upon the criteria set forth in paragraph (g)(1) of this section.

(iii) If the Department denies the petition, the petitioner will be sent a brief written response giving a reason for the denial.

(2) The Department may tentatively decide to modify the post-closure plan if it is deemed necessary to prevent threats to human health and the environment. The Department may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Department will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in paragraph (g)(1)(ii) of this section. After considering the comments, the Department will issue a final determination.

(ii) The Department will base its final determination upon the same criteria as required for petitions under paragraph (g)(1)(i) of this section. A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Department would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

§ 265.119 Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his/her knowledge and in accordance with any records he/she has kept.

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(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

(1) Record an environmental covenant as required in accordance with C.R.S. §§ 25-15-317 et. seq. The covenant shall contain:

(i) a statement that the land has been used to manage hazardous wastes;

(ii) appropriate environmental use restrictions, as defined in § 25-15-101(4.7), C.R.S.; and

(iii) A notation that the survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by §§ 265.116 and 265.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Director of the Colorado Department of Public Health and Environment; and

(2) Submit a certification, signed by the owner or operator, that he/she has recorded the notation specified in paragraph (b)(1) of this section, including a copy of the document in which the notation has been placed, to the Department.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he/she must request a modification to the approved post-closure plan in accordance with the requirements of § 265.118(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 265.117(c). The owner or operator must further comply with the modification and termination provisions of any environmental covenant. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of these regulations. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Department approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search;

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste; or

(3) Modification or termination of the environmental covenant, as appropriate.

§ 265.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Department, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for post-closure care under § 266.14(l).

§ 265.121 Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits.

(a) Owners and operators who are subject to the requirement to obtain a post-closure permit under § 100.10 of these regulations, but who obtain enforceable documents in lieu of post-closure permits, as provided under § 100.10(d) of these regulations, must comply with the following requirements:

- (1) The requirements to submit information about the facility in § 100.41(b)(14) of these regulations;
- (2) The requirements for facility-wide corrective action in § 264.101 of these regulations;
- (3) The requirements of § 264.91 through § 264.100 of these regulations; and
- (4) The requirements of an environmental covenant set forth in C.R.S. §§ 25-15-317 et. seq.

(b)(1) The Director, in issuing enforceable documents under § 265.121 in lieu of permits, will assure a meaningful opportunity for public involvement which, at a minimum, includes public notice and opportunity for public comment:

- (i) When the Department becomes involved in a remediation at the facility as a regulatory or enforcement matter;
- (ii) On the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and
- (iii) At the time of a proposed decision that remedial action is complete at the facility. These requirements must be met before the Director may consider that the facility has met the requirements of § 100.10(d) of these regulations, unless the facility qualifies for a modification to these public involvement procedures under paragraph (b)(2) or (3) of this section.

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(2) If the Director determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the Director may delay compliance with the requirements of paragraph (b)(1) of this section and implement the remedy immediately. However, the Director must assure involvement of the public at the earliest opportunity, and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

(3) The Director may allow a remediation initiated prior to October 22, 1998 to substitute for corrective action required under a post-closure permit even if the public involvement requirements of paragraph (b)(1) of this section have not been met so long as the Director assures that notice and comment on the decision that no further remediation is necessary to protect human health and the environment takes place at the earliest reasonable opportunity after October 22, 1998.

Subpart H -- Hazardous Waste Burned in Boilers and Industrial Furnaces

§ 265.140 Interim status standards for burners.

(a) **Purpose, scope, applicability--(1) General.** (i) The purpose of this section is to establish minimum standards for owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste where such standards define the acceptable management of hazardous waste during the period of interim status. The standards of this section apply to owners and operators of existing facilities until either a permit is issued under § 264.346(b) of these regulations or until closure responsibilities identified in this section are fulfilled.

(ii) Existing or in existence means a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. A facility has commenced construction if the owner or operator has obtained the Federal, State, and local approvals or permits necessary to begin physical construction; and either:

(A) A continuous on-site, physical construction program has begun; or

(B) The owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the facility to be completed within a reasonable time.

(iii) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the facility must comply with the applicable regulations dealing with permit modifications in § 100.63 or changes in interim status in § 100.20 of these regulations.

(2) Reserved.

(3) **Prohibition on burning dioxin-listed wastes.** The following hazardous waste listed for dioxin and hazardous waste derived from any of these wastes may not be burned in a boiler or industrial furnace operating under interim status: F020, F021, F022, F023, F026, and F027.

(4) **Applicability of Part 265 and Part 266 standards.** Owners and operators of boilers and industrial furnaces that burn hazardous waste and are operating under interim status are subject to the following provisions of Parts 265 and 266 of these regulations, except as provided otherwise by this section:

- (i) In Part 265, Subpart A (General), § 265.4;
- (ii) In Part 265, Subpart B (General facility standards), §§ 265.11-265.17;
- (iii) In Part 265, Subpart C (Preparedness and prevention), §§ 265.31-265.37;
- (iv) In Part 265, Subpart D (Contingency plan and emergency procedures), §§ 265.51-265.56;
- (v) In Part 265, Subpart E (Manifest system, recordkeeping, and reporting), §§ 265.71-265.77, except that §§ 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources;
- (vi) In Part 265, Subpart G (Closure and post-closure), §§ 265.111-265.115;
- (vii) In Part 266 (Financial requirements), §§ 266.11, 266.12, 266.14, and 266.16 through 266.18, except that States and the Federal government are exempt from these Part 266 requirements; and
- (viii) Subpart BB (Air emission standards for equipment leaks), except § 265.1050(a).

(5) **Special requirements for furnaces.** The following controls apply during interim status to industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see paragraph (a)(5)(ii) of this section) at any location other than the hot end where products are normally discharged or where fuels are normally fired:

- (i) **Controls.** (A) The hazardous waste shall be fed at a location where combustion gas temperatures are at least 1800° F;
- (B) The owner or operator must determine that adequate oxygen is present in combustion gases to combust organic constituents in the waste and retain documentation of such determination in the facility record;
- (C) For cement kiln systems, the hazardous waste shall be fed into the kiln; and
- (D) The hydrocarbon controls of § 264.342(d) or paragraph (c)(5) of this section apply upon certification of compliance under paragraph (c) of this section irrespective of the CO level achieved during the compliance test.

(ii) **Burning hazardous waste solely as an ingredient.** A hazardous waste is burned for a purpose other than solely as an ingredient if it meets either of these criteria:

(A) The hazardous waste has a total concentration of nonmetal compounds listed in Part 261, Appendix VIII, of these regulations exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as-generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the facility record; or

(B) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatment that removes or destroys organic constituents. Blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly blended must be retained in the facility record.

(6) **Restrictions on burning hazardous waste that is not a fuel.** Prior to certification of compliance under paragraph (c) of this section, owners and operators shall not feed hazardous waste that has a heating value less than 5,000 Btu/lb, as-generated, (except that the heating value of a waste as-generated may be increased to above the 5,000 Btu/lb limit by *bona fide* treatment; however, blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and records must be kept to document that impermissible blending has not occurred) in a boiler or industrial furnace, except that:

(i) Hazardous waste may be burned solely as an ingredient; or

(ii) Hazardous waste may be burned for purposes of compliance testing (or testing prior to compliance testing) for a total period of time not to exceed 720 hours; or

(iii) Such waste may be burned if the Director has documentation to show that, prior to August 21, 1991 (*or prior to the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265*):

(A) The boiler or industrial furnace is operating under the interim status standards for incinerators provided by Subpart O of Part 265 of these regulations, or the interim status standards for thermal treatment units provided by Subpart P of Part 265 of these regulations; and

(B) The boiler or industrial furnace met the interim status eligibility requirements under § 100.20 of these regulations for Subpart O or Subpart P of Part 265 of these regulations; and

(C) Hazardous waste with a heating value less than 5,000 Btu/lb was burned prior to that date; or

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(iv) Such waste may be burned in a halogen acid furnace if the waste was burned as an excluded ingredient under § 261.2(e) of these regulations prior to February 21, 1991 (*or prior to the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265*), and documentation is kept on file supporting this claim.

(7) **Direct transfer to the burner.** If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator must comply with § 264.346(f).

(b) **Certification of precompliance--(1) General.** The owner or operator must provide complete and accurate information specified in paragraph (b)(2) of this section to the Director on or before August 21, 1991 (*or within 180 days of the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265*), and must establish limits for the operating parameters specified in paragraph (b)(3) of this section. Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in paragraph (b)(3) of this section, the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, and HCl and Cl₂ are not likely to exceed the limits provided by §§ 264.343, 264.344, and 264.345. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under paragraph (b)(3) of this section until the owner or operator submits a revised certification of precompliance under paragraph (b)(8) of this section or a certification of compliance under paragraph (c) of this section, or until a permit is issued.

(2) **Information required.** The following information must be submitted with the certification of precompliance to support the determination that the limits established for the operating parameters identified in paragraph (b)(3) of this section are not likely to result in an exceedance of the allowable emission rates for particulate matter, metals, and HCl and Cl₂#

(i) **General facility information:**

(A) EPA facility ID number;

(B) Facility name, contact person, telephone number, and address;

(C) Description of boilers and industrial furnaces burning hazardous waste, including type and capacity of device;

(D) A scaled plot plan showing the entire facility and location of the boilers and industrial furnaces burning hazardous waste; and

(E) A description of the air pollution control system on each device burning hazardous waste, including the temperature of the flue gas at the inlet to the particulate matter control system.

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(ii) Except for facilities complying with the Tier I or Adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by §§ 264.344(b) or (e) and 264.345(b)(1) or (e), respectively, the estimated uncontrolled (at the inlet to the air pollution control system) emissions of particulate matter, each metal controlled by § 264.344, and hydrogen chloride and chlorine, and the following information to support such determinations:

(A) The feed rate (lb/hr) of ash, chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream (hazardous waste, other fuels, industrial furnace feedstocks);

(B) The estimated partitioning factor to the combustion gas for the materials identified in paragraph (b)(2)(ii)(A) of this section and the basis for the estimate and an estimate of the partitioning to HCl and Cl₂ of total chloride and chlorine in feed materials. To estimate the partitioning factor, the owner or operator must use either best engineering judgment or the procedures specified in Appendix IX to § 264.348 of these regulations.

(C) For industrial furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions standards under paragraph (c)(3)(ii)(A), the estimated enrichment factor for each metal. To estimate the enrichment factor, the owner or operator must use either best engineering judgment or the procedures specified in “Alternative Methodology for Implementing Metals Controls” in Appendix IX to § 264.348 of these regulations.

(D) If best engineering judgment is used to estimate partitioning factors or enrichment factors under paragraphs (b)(2)(ii)(B) or (b)(2)(ii)(C) respectively, the basis for the judgment. When best engineering judgment is used to develop or evaluate data or information and make determinations under this section, the determinations must be made by a qualified, registered professional engineer and a certification of his/her determinations in accordance with § 100.12(d) of these regulations must be provided in the certification of precompliance.

(iii) For facilities complying with the Tier I or Adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by §§ 264.344(b) or (e) and 264.345(b)(1) or (e), the feed rate (lb/hr) of total chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feed stream (hazardous waste, other fuels, industrial furnace feedstocks).

(iv) For facilities complying with the Tier II or Tier III emission limits for metals or HCl and Cl₂ (under §§ 264.344(c) or (d) or 264.345(b)(2) or (c)), the estimated controlled (outlet of the air pollution control system) emissions rates of particulate matter, each metal controlled by § 264.344, and HCl and Cl₂, and the following information to support such determinations:

(A) The estimated air pollution control system (APCS) removal efficiency for particulate matter, HCl, Cl₂, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium.

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(B) To estimate APCS removal efficiency, the owner or operator must use either best engineering judgment or the procedures prescribed in Appendix IX to § 264.348 of these regulations.

(C) If best engineering judgment is used to estimate APCS removal efficiency, the basis for the judgment. Use of best engineering judgment must be in conformance with provisions of paragraph (b)(2)(ii)(D) of this section.

(v) Determination of allowable emissions rates for HCl, Cl₂, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium, and the following information to support such determinations:

(A) For all facilities:

- (1) Physical stack height;
- (2) Good engineering practice stack height as defined by 40 CFR 51.100(ii);
- (3) Maximum flue gas flow rate;
- (4) Maximum flue gas temperature;
- (5) Attach a US Geological Service topographic map (or equivalent) showing the facility location and surrounding land within 5 km of the facility;
- (6) Identify terrain type: complex or noncomplex; and
- (7) Identify land use: urban or rural.

(B) For owners and operators using Tier III site specific dispersion modeling to determine allowable levels under § 264.344(d) or § 264.345(c), or adjusted Tier I feed rate screening limits under §§ 264.344(e) or 264.345(e):

- (1) Dispersion model and version used;
- (2) Source of meteorological data;
- (3) The dilution factor in micrograms per cubic meter per gram per second of emissions for the maximum annual average off-site (unless on-site is required) ground level concentration (MEI location); and
- (4) Indicate the MEI location on the map required under paragraph (b)(2)(v)(A)(5);

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(vi) For facilities complying with the Tier II or III emissions rate controls for metals or HCl and Cl₂, a comparison of the estimated controlled emissions rates determined under paragraph (b)(2)(iv) with the allowable emission rates determined under paragraph (b)(2)(v);

(vii) For facilities complying with the Tier I (or adjusted Tier I) feed rate screening limits for metals or total chloride and chlorine, a comparison of actual feed rates of each metal and total chlorine and chloride determined under paragraph (b)(2)(iii) of this section to the Tier I allowable feed rates; and

(viii) For industrial furnaces that feed hazardous waste for any purpose other than solely as an ingredient (as defined by paragraph (a)(5)(ii) of this section) at any location other than the product discharge end of the device, documentation of compliance with the requirements of paragraphs (a)(5)(i)(A), (B), and (C) of this section.

(ix) For industrial furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions standards under paragraph (c)(3)(ii)(A) of this section:

(A) The applicable particulate matter standard in lb/hr; and

(B) The precompliance limit on the concentration of each metal in collected PM.

(3) **Limits on operating conditions.** The owner and operator shall establish limits on the following parameters consistent with the determinations made under paragraph (b)(2) of this section and certify (under provisions of paragraph (b)(9) of this section) to the Director that the facility will operate within the limits during interim status when there is hazardous waste in the unit until revised certification of precompliance under paragraph (b)(8) of this section or certification of compliance under paragraph (c) of this section:

(i) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 264.344) pumpable hazardous waste;

(ii) Feed rate of each metal in the following feed streams:

(A) Total feed streams, except that industrial furnaces that comply with the alternative metals implementation approach under paragraph (b)(4) of this section must specify limits on the concentration of each metal in collected particulate matter in lieu of feed rate limits for total feedstreams;

(B) Total hazardous waste feed, unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e); and

(C) Total pumpable hazardous waste feed, unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e);

(iii) Total feed rate of chlorine and chloride in total feed streams;

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(iv) Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited; and

(v) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under § 264.345(b)(1) or (e) and for all metals under § 264.344(b) or (e), and the uncontrolled particulate emissions do not exceed the standard under § 264.343.

(4) **Operating requirements for furnaces that recycle PM.** Owners and operators of furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions controls under paragraph (c)(3)(ii)(A) of this section must comply with the special operating requirements provided in “Alternative Methodology for Implementing Metals Controls” in Appendix IX to § 264.348 of these regulations.

(5) **Measurement of feed rates and production rate--(i) General requirements.** Limits on each of the parameters specified in paragraph (b)(3) of this section (except for limits on metals concentrations in collected particulate matter (PM) for industrial furnaces that recycle collected PM) shall be established and continuously monitored under either of the following methods:

(A) **Instantaneous limits.** A limit for a parameter may be established and continuously monitored and recorded on an instantaneous basis (i.e., the value that occurs at any time) not to be exceeded at any time; or

(B) **Hourly rolling average limits.** A limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

(1) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(2) An hourly rolling average is the arithmetic mean of the 60 most recent 1-minute average values recorded by the continuous monitoring system.

(ii) **Rolling average limits for carcinogenic metals and lead.** Feed rate limits for the carcinogenic metals (arsenic, beryllium, cadmium, and chromium) and lead may be established either on an hourly rolling average basis as prescribed by paragraph (b)(5)(i)(B) or on (up to) a 24 hour rolling average basis. If the owner or operator elects to use an averaging period from 2 to 24 hours:

(A) The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed on an hourly rolling average basis;

(B) The continuous monitor shall meet the following specifications:

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(1) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(2) The rolling average for the selected averaging period is defined as the arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60-minute period beginning at one minute after the beginning of preceding clock hour.

(iii) **Feed rate limits for metals, total chloride and chlorine, and ash.** Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of paragraphs (b)(5) (i) and (ii) of this section.

(6) **Public notice requirements at precompliance.** On or before August 21, 1991 (*or within 180 days of the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265*) the owner or operator must submit a notice with the following information for publication in a major local newspaper of general circulation and send a copy of the notice to the appropriate units of State and local government. The owner and operator must provide to the Director with the certification of precompliance evidence of submitting the notice for publication. The notice, which shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 6 CCR 1007-3, Section 265.140", must include:

- (i) Name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;
- (ii) Date that the certification of precompliance is submitted to the Director;
- (iii) Brief description of the regulatory process required to comply with the interim status requirements of this section including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl₂;
- (iv) Types and quantities of hazardous waste burned including, but not limited to, source, whether solids or liquids, as well as an appropriate description of the waste;
- (v) Type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;
- (vi) Types and quantities of other fuels and industrial furnace feedstocks fed to each unit;
- (vii) Brief description of the basis for this certification of precompliance as specified in paragraph (b)(2) of this section;

(viii) **Locations where the record for the facility can be viewed and copied by interested parties.** These records and locations shall at a minimum include:

(A) The administrative record kept by the Department office where the supporting documentation was submitted or another location designated by the Director; and

(B) The BIF correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the Director, State and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and State site visit reports submitted to the owner or operator.

(ix) Notification of the establishment of a facility mailing list whereby interested parties shall notify the Department that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(x) Location (mailing address) of the Department, where further information can be obtained on regulation of hazardous waste burning in Colorado.

(7) **Monitoring other operating parameters.** When the monitoring systems for the operating parameters listed in paragraphs (c)(1)(v through xiii) of this section are installed and operating in conformance with vendor specifications or (for CO, HC, and oxygen) specifications provided by Appendix IX of this part, as appropriate, the parameters shall be continuously monitored and records shall be maintained in the operating record.

(8) **Revised certification of precompliance.** The owner or operator may revise at any time the information and operating conditions documented under paragraphs (b)(2) and (b)(3) of this section in the certification of precompliance by submitting a revised certification of precompliance under procedures provided by those paragraphs.

(i) The public notice requirements of paragraph (b)(6) of this section do not apply to recertifications.

(ii) The owner and operator must operate the facility within the limits established for the operating parameters under paragraph (b)(3) of this section until a revised certification is submitted under this paragraph or a certification of compliance is submitted under paragraph (c) of this section.

(9) **Certification of precompliance statement.** The owner or operator must include the following signed statement with the certification of precompliance submitted to the Director:

“I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results and other information used to

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determine conformance with the requirements of § 265.140(b) are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, 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.

I also acknowledge that the operating limits established in this certification pursuant to § 265.140(b)(3) and (4) are enforceable limits at which the facility can legally operate during interim status until: (1) A revised certification of precompliance is submitted, (2) a certification of compliance is submitted, or (3) an operating permit is issued.”

(c) **Certification of compliance.** The owner or operator shall conduct emissions testing to document compliance with the emissions standards of §§ 264.342(b) through (g), 264.343, 264.344, 264.345, and paragraph (a)(5)(i)(D) of this section, under the procedures prescribed by this paragraph, except under extensions of time provided by paragraph (c)(7). Based on the compliance test, the owner or operator shall submit to the Director on or before August 21, 1992 (*or within one year of the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265*) a complete and accurate “certification of compliance” (under paragraph (c)(4) of this section) with those emission standards establishing limits on the operating parameters specified in paragraph (c)(1).

(1) **Limits on operating conditions.** The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in paragraph (c)(4)(iv) of this section) or as otherwise specified and include these limits with the certification of compliance. The boiler or industrial furnace must be operated in accordance with these operating limits and the applicable emissions standards of §§ 264.342(c) through (g), 264.343, 264.344, 264.345 and 265.140(a)(5)(i)(D) at all times when there is hazardous waste in the unit.

(i) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e)), pumpable hazardous waste;

(ii) Feed rate of each metal in the following feedstreams:

(A) Total feedstreams, except that:

(1) Facilities that comply with Tier I or Adjusted Tier I metals feed rate screening limits may set their operating limits at the metals feed rate screening limits determined under § 264.344(b) or (e); and

(2) Industrial furnaces that must comply with the alternative metals implementation approach under paragraph (c)(3)(ii) of this section must specify limits on the concentration of each metal in the collected particulate matter in lieu of feed rate limits for total feedstreams;

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(B) Total hazardous waste feed (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e)); and

(C) Total pumpable hazardous waste feed (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e));

(iii) Total feed rate of chlorine and chloride in total feed streams, except that facilities that comply with Tier I or Adjusted Tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under § 264.345(b)(1) or (e);

(iv) Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited;

(v) Carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas. When complying with the CO controls of § 264.342(c), the CO limit is 100 ppmv, and when complying with the HC controls of § 264.342(d), the HC limit is 20 ppmv. When complying with the CO controls of § 264.342(d), the CO limit is established based on the compliance test;

(vi) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under § 264.345(b)(1) or (e) and for all metals under § 264.344(b) or (e), and the uncontrolled particulate emissions do not exceed the standard under § 264.343;

(vii) Maximum combustion chamber temperature where the temperature measurement is as close to the combustion zone as possible and is upstream of any quench water injection (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e));

(viii) Maximum flue gas temperature entering a particulate matter control device (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e) and the total chlorine and chloride feed rate screening limits under § 264.345(b) or (e));

(ix) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b)(1) or (e) and the total chlorine feed rate screening limits under § 264.345(b) or (e)) in:

(A) Minimum liquid to flue gas ratio;

(B) Minimum scrubber blowdown from the system or maximum suspended solids content of scrubber water; and

(C) Minimum pH level of the scrubber water;

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(x) For systems using venturi scrubbers, the minimum differential gas pressure across the venturi (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e) and the total chlorine and chloride feed rate screening limits under § 264.345(b)(1) or (e));

(xi) For systems using dry scrubbers (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e) and the total chlorine and chloride feed rate screening limits under § 264.345(b)(1) or (e)):

(A) Minimum caustic feed rate; and

(B) Maximum flue gas flow rate;

(xii) For systems using wet ionizing scrubbers or electrostatic precipitators (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 264.344(b) or (e) and the total chlorine and chloride feed rate screening limits under § 264.345(b)(1) or (e)):

(A) Minimum electrical power in kilovolt amperes (kVA) to the precipitator plates; and

(B) Maximum flue gas flow rate;

(xiii) For systems using fabric filters (baghouses), the minimum pressure drop (unless complying with the Tier I or Adjusted Tier I metal feed rate screening limits under § 264.344(b) or (e) and the total chlorine and chloride feed rate screening limits under § 264.345(b)(1) or (e)).

(2) **Prior notice of compliance testing.** At least 30 days prior to the compliance testing required by paragraph (c)(3) of this section, the owner or operator shall notify the Director and submit the following information:

(i) General facility information including:

(A) EPA facility ID number;

(B) Facility name, contact person, telephone number, and address;

(C) Person responsible for conducting compliance test, including company name, address, and telephone number, and a statement of qualifications;

(D) Planned date of the compliance test;

(ii) Specific information on each device to be tested including:

(A) Description of boiler or industrial furnace;

(B) A scaled plot plan showing the entire facility and location of the boiler or industrial furnace;

(C) A description of the air pollution control system;

(D) Identification of the continuous emission monitors that are installed, including:

(1) Carbon monoxide monitor;

(2) Oxygen monitor;

(3) Hydrocarbon monitor, specifying the minimum temperature of the system and, if the temperature is less than 150°C, an explanation of why a heated system is not used (see paragraph (c)(5) of this section) and a brief description of the sample gas conditioning system;

(E) Indication of whether the stack is shared with another device that will be in operation during the compliance test;

(F) Other information useful to an understanding of the system design or operation.

(iii) Information on the testing planned, including a complete copy of the test protocol and Quality Assurance/Quality Control (QA/QC) plan, and a summary description for each test providing the following information at a minimum:

(A) Purpose of the test (e.g., demonstrate compliance with emissions of particulate matter); and

(B) Planned operating conditions, including levels for each pertinent parameter specified in paragraph (c)(1) of this section.

(3) **Compliance testing--(i) General.** Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under paragraph (b) of this section and under conditions established in the notification of compliance testing required by paragraph (c)(2) of this section. The owner or operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar onsite unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The Director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of § 265.140(c).

(ii) **Special requirements for industrial furnaces that recycle collected PM.** Owners and operators of industrial furnaces that recycle back into the furnace particulate matter (PM) from the air pollution control system must comply with one of the following procedures for testing to determine compliance with the metals standards of § 264.344(c) or (d):

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(A) The special testing requirements prescribed in “Alternative Method for Implementing Metals Controls” in Appendix IX to § 264.348 of these regulations; or

(B) Stack emissions testing for a minimum of 6 hours each day while hazardous waste is burned during interim status. The testing must be conducted when burning normal hazardous waste for that day at normal feed rates for that day and when the air pollution control system is operated under normal conditions. During interim status, hazardous waste analysis for metals content must be sufficient for the owner or operator to determine if changes in metals content may affect the ability of the facility to meet the metals emissions standards established under § 264.344(c) or (d). Under this option, operating limits (under paragraph (c)(1) of this section) must be established during compliance testing under paragraph (c)(3) of this section only on the following parameters;

- (1) Feed rate of total hazardous waste;
- (2) Total feed rate of chlorine and chloride in total feed streams;
- (3) Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited;
- (4) Carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas;
- (5) Maximum production rate of the device in appropriate units when producing normal product; or

(C) Conduct compliance testing to determine compliance with the metals standards to establish limits on the operating parameters of paragraph (c)(1) of this section only after the kiln system has been conditioned to enable it to reach equilibrium with respect to metals fed into the system and metals emissions. During conditioning, hazardous waste and raw materials having the same metals content as will be fed during the compliance test must be fed at the feed rates that will be fed during the compliance test.

(iii) **Conduct of compliance testing.** (A) If compliance with all applicable emissions standards of §§ 264.342 through 264.345 is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.

(B) Prior to obtaining test data for purposes of demonstrating compliance with the applicable emissions standards of §§ 264.342 through 264.345 or establishing limits on operating parameters under this section, the facility must operate under compliance test conditions for a sufficient period to reach steady-state operations. Industrial furnaces that recycle collected particulate matter back into the furnace and that comply with paragraphs (c)(3)(ii)(A) or (B) of this section, however, need not

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reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals.

(C) Compliance test data on the level of an operating parameter for which a limit must be established in the certification of compliance must be obtained during emissions sampling for the pollutant(s) (i.e., metals, PM, HCl/Cl₂, organic compounds) for which the parameter must be established as specified by paragraph (c)(1) of this section.

(4) **Certification of compliance.** Within 90 days of completing compliance testing, the owner or operator must certify to the Director compliance with the emissions standards of §§ 264.342(c), (d), and (g), 264.343, 264.344, 264.345, and paragraph (a)(5)(i)(D) of this section. The certification of compliance must include the following information:

(i) **General facility and testing information including:**

(A) EPA facility ID number;

(B) Facility name, contact person, telephone number, and address;

(C) Person responsible for conducting compliance testing, including company name, address, and telephone number, and a statement of qualifications;

(D) Date(s) of each compliance test;

(E) Description of boiler or industrial furnace tested;

(F) Person responsible for quality assurance/quality control (QA/QC), title, and telephone number, and statement that procedures prescribed in the QA/QC plan submitted under § 265.140(c)(2)(iii) have been followed, or a description of any changes and an explanation of why changes were necessary.

(G) Description of any changes in the unit configuration prior to or during testing that would alter any of the information submitted in the prior notice of compliance testing under paragraph (c)(2) of this section, and an explanation of why the changes were necessary;

(H) Description of any changes in the planned test conditions prior to or during the testing that alter any of the information submitted in the prior notice of compliance testing under paragraph (c)(2) of this section, and an explanation of why the changes were necessary; and

(I) The complete report on results of emissions testing.

(ii) **Specific information on each test including:**

(A) Purpose(s) of test (e.g., demonstrate conformance with the emissions limits for particulate matter, metals, HCl, Cl₂, and CO).

(B) Summary of test results for each run and for each test including the following information:

- (1) Date of run;
- (2) Duration of run;
- (3) Time-weighted average and highest hourly rolling average CO level for each run and for the test;
- (4) Highest hourly rolling average HC level, if HC monitoring is required for each run and for the test;
- (5) If dioxin and furan testing is required under § 264.342(g), time-weighted average emissions for each run and for the test of chlorinated dioxin and furan emissions, and the predicted maximum annual average ground level concentration of the toxicity equivalency factor;
- (6) Time-weighted average particulate matter emissions for each run and for the test;
- (7) Time-weighted average HCl and Cl₂ emissions for each run and for the test;
- (8) Time-weighted average emissions for the metals subject to regulation under § 264.344 for each run and for the test; and
- (9) QA/QC results.

(iii) Comparison of the actual emissions during each test with the emissions limits prescribed by §§ 264.342(c), (d), and (g), 264.343, 264.344, and 264.345, and established for the facility in the certification of precompliance under paragraph (b) of this section.

(iv) Determination of operating limits based on all valid runs of the compliance test for each applicable parameter listed in paragraph (c)(1) of this section using either of the following procedures:

(A) **Instantaneous limits.** A parameter may be measured and recorded on an instantaneous basis (i.e., the value that occurs at any time) and the operating limit specified as the time-weighted average during all runs of the compliance test; or

(B) **Hourly rolling average basis.** (1) The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

- (i) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(ii) An hourly rolling average is the arithmetic mean of the 60 most recent 1-minute average values recorded by the continuous monitoring system.

(2) The operating limit for the parameter shall be established based on compliance test data as the average over all test runs of the highest hourly rolling average value for each run.

(C) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (i.e., arsenic, beryllium, cadmium and chromium) and lead may be established either on an hourly rolling average basis as prescribed by paragraph (c)(4)(iv)(B) of this section or on (up to) a 24 hour rolling average basis. If the owner or operator elects to use an averaging period from 2 to 24 hours:

(1) The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed on an hourly rolling average basis;

(2) The continuous monitor shall meet the following specifications:

(i) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(ii) The rolling average for the selected averaging period is defined as arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60-minute period beginning at one minute after the beginning of preceding clock hour; and

(3) The operating limit for the feed rate of each metal shall be established based on compliance test data as the average over all test runs of the highest hourly rolling average feed rate for each run.

(D) Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of paragraphs (c)(4)(iv) (A) through (C) of this section.

(v) Certification of compliance statement. The following statement shall accompany the certification of compliance:

“I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting

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documentation. Copies of all emissions tests, dispersion modeling results and other information used to determine conformance with the requirements of § 265.140(c) are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, 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.

I also acknowledge that the operating conditions established in this certification pursuant to § 265.140(c)(4)(iv), are enforceable limits at which the facility can legally operate during interim status until a revised certification of compliance is submitted.”

(5) Special requirements for HC monitoring systems. When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by § 264.344(d) 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 to § 264.348 of these regulations provided that the owner or operator submits a certification of compliance without using extensions of time provided by paragraph (c)(7) of this section.

(6) Special operating requirements for industrial furnaces that recycle collected PM. Owners and operators of industrial furnaces that recycle back into the furnace particulate matter (PM) from the air pollution control system must:

(i) When complying with the requirements of paragraph (c)(3)(ii)(A) of this section, comply with the operating requirements prescribed in “Alternative Method to Implement the Metals Controls” in Appendix IX to § 264.348 of these regulations; and

(ii) When complying with the requirements of paragraph (c)(3)(ii)(B) of this section, comply with the operating requirements prescribed by that paragraph.

(7) Extensions of time. (i) If the owner or operator does not submit a complete certification of compliance for all of the applicable emissions standards of §§ 264.342, 264.343, 264.344, and 264.345 by August 21, 1992 (*or within one year of the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265*), he/she must either:

(A) Stop burning hazardous waste and begin closure activities under paragraph (l) of this section for the hazardous waste portion of the facility; or

(B) Limit hazardous waste burning only for purposes of compliance testing (and pretesting to prepare for compliance testing) a total period of 720 hours for the period of time beginning August 21, 1992 (*or beginning one year after the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265*), submit a notification to the Director by August 21, 1992 (*or within one year of the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265*) stating that

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the facility is operating under restricted interim status and intends to resume burning hazardous waste, and submit a complete certification of compliance by August 23, 1993 (or within two years of the effective date of the regulations which first require the owner or operator to comply with the standards set forth in Part 265) ; or

(C) Obtain a case-by-case extension of time under paragraph (c)(7)(ii) of this section.

(ii) The owner or operator may request a case-by-case extension of time to extend any time limit provided by paragraph (c) of this section if compliance with the time limit is not practicable for reasons beyond the control of the owner or operator.

(A) In granting an extension, the Director may apply conditions as the facts warrant to ensure timely compliance with the requirements of this section and that the facility operates in a manner that does not pose a hazard to human health and the environment;

(B) When an owner or operator requests an extension of time to enable the facility to comply with the alternative hydrocarbon provisions of § 264.344(h) and obtain a RCRA operating permit because the facility cannot meet the HC limit of § 264.344(d) of these regulations:

(1) The Director shall, in considering whether to grant the extension:

(i) Determine whether the owner and operator have submitted in a timely manner a complete part B permit application that includes information required under § 100.41(b)(5) of these regulations; and

(ii) Consider whether the owner and operator have made a good faith effort to certify compliance with all other emission controls, including the controls on dioxins and furans of § 264.342(g) and the controls on PM, metals, and HCl/Cl₂.

(2) If an extension is granted, the Director shall, as a condition of the extension, require the facility to operate under flue gas concentration limits on CO and HC that, based on available information, including information in the part B permit application, are baseline CO and HC levels as defined by § 264.344(h)(1).

(8) Revised certification of compliance. The owner or operator may submit at any time a revised certification of compliance (recertification of compliance) under the following procedures:

(i) Prior to submittal of a revised certification of compliance, hazardous waste may not be burned for more than a total of 720 hours under operating conditions that exceed those established under a current certification of compliance, and such burning may be conducted only for purposes of determining whether the facility can operate under revised conditions and continue to meet the applicable emissions standards of §§ 264.342, 264.343, 264.344, and 264.345;

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(ii) At least 30 days prior to first burning hazardous waste under operating conditions that exceed those established under a current certification of compliance, the owner or operator shall notify the Director and submit the following information:

(A) EPA facility ID number, and facility name, contact person, telephone number, and address;

(B) Operating conditions that the owner or operator is seeking to revise and description of the changes in facility design or operation that prompted the need to seek to revise the operating conditions;

(C) A determination that when operating under the revised operating conditions, the applicable emissions standards of §§ 264.342, 264.343, 264.344, and 264.345 are not likely to be exceeded. To document this determination, the owner or operator shall submit the applicable information required under paragraph (b)(2) of this section; and

(D) Complete emissions testing protocol for any pretesting and for a new compliance test to determine compliance with the applicable emissions standards of §§ 264.342, 264.343, 264.344, and 264.345 when operating under revised operating conditions. The protocol shall include a schedule of pre-testing and compliance testing. If the owner and operator revises the scheduled date for the compliance test, he/she shall notify the Director in writing at least 30 days prior to the revised date of the compliance test;

(iii) Conduct a compliance test under the revised operating conditions and the protocol submitted to the Director to determine compliance with the applicable emissions standards of §§ 264.342, 264.343, 264.344, and 264.345; and

(iv) Submit a revised certification of compliance under paragraph (c)(4) of this section.

(d) **Periodic Recertifications.** The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

(e) **Noncompliance with certification schedule.** If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (b), (c), and (d) of this section, hazardous waste burning must terminate on the date that the deadline is missed, closure activities must begin under paragraph (l) of this section, and hazardous waste burning may not resume except under an operating permit issued under § 100.28 of these regulations. For purposes of compliance with the closure provisions of paragraph (l) of this section and §§ 265.112(d)(2) and 265.113 of these regulations the boiler or industrial furnace has received “the known final volume of hazardous waste” on the date that the deadline is missed.

(f) **Start-up and shut-down.** Hazardous waste (except waste fed solely as an ingredient under the Tier I (or adjusted Tier I) feed rate screening limits for metals and chloride/chlorine) must not be fed into the device during start-up and shut-down of the boiler or industrial furnace, unless the device is operating within the conditions of operation specified in the certification of compliance.

(g) **Automatic waste feed cutoff.** During the compliance test required by paragraph (c)(3) of this section, and upon certification of compliance under paragraph (c) of this section, a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in paragraphs (c)(1) (i) and (v through xiii) of this section deviate from those established in the certification of compliance. In addition:

(1) To minimize emissions of organic compounds, the minimum combustion chamber temperature (or the indicator of combustion chamber temperature) that occurred during the compliance test must be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber, with the minimum temperature during the compliance test defined as either:

(i) If compliance with the combustion chamber temperature limit is based on an hourly rolling average, the minimum temperature during the compliance test is considered to be the average over all runs of the lowest hourly rolling average for each run; or

(ii) If compliance with the combustion chamber temperature limit is based on an instantaneous temperature measurement, the minimum temperature during the compliance test is considered to be the time-weighted average temperature during all runs of the test; and

(2) Operating parameters limited by the certification of compliance must continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the limits established in the certification of compliance.

(h) **Fugitive emissions.** Fugitive emissions must be controlled by:

(1) Keeping the combustion zone totally sealed against fugitive emissions; or

(2) Maintaining the combustion zone pressure lower than atmospheric pressure; or

(3) An alternate means of control that the owner or operator can demonstrate provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure. Support for such demonstration shall be included in the operating record.

(i) **Changes.** A boiler or industrial furnace must cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits specified in the certification of compliance.

(j) **Monitoring and Inspections.** (1) The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste:

(i) Feed rates and composition of hazardous waste, other fuels, and industrial furnace feed stocks, and feed rates of ash, metals, and total chloride and chlorine as necessary to ensure conformance with the certification of precompliance or certification of compliance;

(ii) Carbon monoxide (CO), oxygen, and if applicable, hydrocarbons (HC), on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with the operating limits specified in the certification of compliance. CO, HC, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in Appendix IX to § 264.348 of these regulations.

(iii) Upon the request of the Director, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feed stocks as appropriate) and the stack gas emissions must be conducted to verify that the operating conditions established in the certification of precompliance or certification of compliance achieve the applicable standards of §§ 264.342, 264.343, 264.344, and 264.345.

(2) The boiler or industrial furnace and associated equipment (pumps, valves, pipes, fuel storage tanks, etc.) must be subjected to thorough visual inspection when they contain hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.

(3) The automatic hazardous waste feed cutoff system and associated alarms must be tested at least once every 7 days when hazardous waste is burned to verify operability, unless the owner or operator can demonstrate that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. Support for such demonstration shall be included in the operating record. At a minimum, operational testing must be conducted at least once every 30 days.

(4) These monitoring and inspection data must be recorded and the records must be placed in the operating log.

(k) **Recordkeeping.** The owner or operator must keep in the operating record of the facility all information and data required by this section for five years.

(l) **Closure.** At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace and must comply with §§ 265.111-265.115 of these regulations.

Subpart I -- Use and Management of Containers

§ 265.170 Applicability.*

The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as § 265.1 provides otherwise.

* Re-use of containers in transportation is governed by U.S. Department of Transportation regulations and the Colorado Public Utilities Commission, including those set forth in 49 CFR § 173.28.

§ 265.171 Condition of containers.

If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part.

§ 265.172 Compatibility of waste with container.

The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

§ 265.173 Management of containers.*

(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

§ 265.174 Inspections.

(a) At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for: leaking containers, deterioration of containers caused by corrosion or other factors, compliance with §§ 265.170 through 265.173 of this Part, and the applicable labeling requirements of § 262.34 of these regulations.

(b) Problems identified during the inspection shall be remedied in accordance with § 265.15(c) of these regulations.

[**Comment:** See § 265.171 for remedial action required if deterioration or leaks are detected.]

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§ 265.176 Special requirements for ignitable or reactive waste.

Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

§ 265.177 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same container, unless § 265.17(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see Appendix V for examples), unless § 265.17(b) is complied with.

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(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall or other device.*

* Re-use of containers in transportation is governed by U.S. Department of Transportation regulations and the Colorado Public Utilities Commission, including those set forth in 49 CFR § 173.28.

§ 265.178 Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of Subparts AA, BB, and CC of this part.

Subpart J -- Tanks

§ 265.190 Applicability.

The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), (c), and (d) of this section or in § 265.1 of this part.

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 265.193. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test method must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of these regulations.

(b) Tank systems, including sumps, as defined in § 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in § 265.193(a).

(c) Sumps which have sufficiently low storage capacities and short accumulation times such that they mainly function as flow control devices, and which otherwise fit the definition of "ancillary equipment", are subject to the requirements for ancillary equipment rather than the requirements for tanks.

(d) Tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in § 260.10 of these regulations and regulated under Part 265 Subpart W, must meet the requirements of this subpart.

§ 265.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified registered professional engineer, in accordance with § 100.12(d) that attests to the tank system's integrity within one year of the effective date of these regulations. The effective date of these regulations for new underground tanks, for underground tanks that cannot be entered for inspection, and for tanks operated by small quantity generators is January 12, 1988.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the waste(s) that have been or will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination, that is certified by an independent, qualified, registered professional engineer, in accordance with § 100.12(d), that addresses cracks, leaks, corrosion, and erosion.

[NOTE - The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks", 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.]

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(c) Tank systems that store or treat materials that become hazardous wastes subsequent to the effective date of these regulations, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste. The effective date of these regulations for new underground tanks, for underground tanks that cannot be entered for inspection, and for tanks operated by small quantity generators is July 14, 1986.

(d) If, as a result of the assessment conducted in accordance with paragraph (a), a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of § 265.196.

§ 265.192 Design and installation of new tank system or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Department, at time of submittal of Part B information, a written assessment, reviewed and certified by an independent, qualified registered professional engineer, in accordance with § 100.12(d) attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Department to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

- (1) Design standard(s) according to which tank(s) and the ancillary equipment is or will be constructed;
- (2) Hazardous characteristics of the waste(s) to be handled;
- (3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of:
 - (i) Factors affecting the potential for corrosion, including but not limited to:
 - (A) Soil moisture content;
 - (B) Soil pH;
 - (C) Soil sulfides level;
 - (D) Soil resistivity;
 - (E) Structure to soil potential;

- (F) Influence of nearby underground metal structures (e.g., piping);
 - (G) Stray electric current; and,
 - (H) Existing corrosion - protection measures (e.g., coating, cathodic protection), and
- (ii) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:
- (A) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic;
 - (B) Corrosion-resistant coating (such as epoxy or fiberglass) with cathodic protection (e.g., impressed current or sacrificial anodes); and
 - (C) Electrical isolation devices such as insulating joints and flanges.

[NOTE - The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85) - Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", may be used, where applicable, as guidelines in providing corrosion protection for tank systems.]

- (4) For underground tank system components that are likely to be adversely affected by vehicular traffic a determination of design or operational measures that will protect the tank system against potential damage; and
- (5) Design considerations to ensure that:
- (i) Tank foundations will maintain the load of a full tank;
 - (ii) Tank systems will be anchored to prevent floatation or dislodgement where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and
 - (iii) Tank systems will withstand the effects of frost heave.

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(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

- (1) Weld breaks;
- (2) Punctures;
- (3) Scrapes of protective coatings;
- (4) Cracks;
- (5) Corrosion;
- (6) Other structural damage or inadequate construction/installation.

All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

(c) New tank systems or components that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(d) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed into use.

(e) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

[NOTE - The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems", or ANSI Standard B31.3, "Petroleum Refinery Piping", and ANSI Standard B31.4 "Liquid Petroleum Transportation Piping System", may be used, where applicable, as guidelines for proper installation of piping systems.]

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(f) The owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under paragraph (a)(3) of this section, or other corrosion protection if the Department believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(g) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of paragraphs (b) through (f) of this section, that attest that the tank system was properly designed and installed and that repairs, pursuant to paragraphs (b) and (d) of this section, were performed. These written statements must also include the certification statements as required by § 100.12(d).

(h) Hazardous waste may not be accumulated in open top tanks.

§ 265.193 Containment and detection of releases.

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section must be provided (except as provided in paragraphs (f) and (g) of this section):

(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

(b) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of paragraph (b) of this section, secondary containment systems must be at a minimum:

(1) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic).

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- (2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;
- (3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the owner or operator can demonstrate to the Department that existing detection technologies or site conditions will not allow detection of a release within 24 hours; and
- (4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the Department that removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

[NOTE: - If the collected material including precipitation is a hazardous waste under Part 261 of these regulations, it is subject to management as a hazardous waste in accordance with all applicable requirements of Parts 262 through 265 of these regulations. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of Sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of Section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR Part 302).

- (d) Secondary containment for tanks must include one or more of the following devices:
 - (1) A liner (external to the tank);
 - (2) A vault;
 - (3) A double-walled tank; or
 - (4) An equivalent device as approved by the Department

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(e) In addition to the requirements of paragraphs (b), (c), and (d) of this section, secondary containment systems must satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e. capable of preventing lateral as well as vertical migration of the waste).

(2) Vault systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

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(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24 hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place in all joints (if any);

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(A) Meets the definition of ignitable waste under § 261.21 of these regulations; or

(B) Meets the definition of reactive waste under § 261.23 of these regulations, and may form an ignitable or explosive vapor;

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks must be:

(i) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator can demonstrate to the Department, and the Department concludes, that the existing detection technology or site conditions would not allow detection of a release within 24 hours.

[NOTE - The provisions outlined in the Steel Tank Institutes (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.]

(f) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of paragraphs (b) and (c) of this section except for:

(1) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

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(2) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of this section if the Department finds, as a result of a demonstration by the owner or operator, either: that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the ground water **or** surface water at least as effectively as secondary containment during the active life of the tank system **or** that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph (g)(2) of this section, be exempted from the secondary containment requirements of this section. Application for a variance as allowed in paragraph (g) of this section does not waive compliance with the requirements of this subpart for new tank systems.

(1) In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the Department will consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and ground water, and

(iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

(2) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the Department will consider:

(i) The potential adverse effects on ground water, surface water, and land quality taking into account:

(A) The physical and chemical characteristics of the waste in the tank system, including its potential for migration.

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- (B) The hydrogeological characteristics of the facility and surrounding land,
 - (C) The potential for health risks caused by human exposure to waste constituents,
 - (D) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and
 - (E) The persistence and permanence of the potential adverse effects;
- (ii) The potential adverse effects of a release on ground water quality, taking into account:
- (A) The quantity and quality of ground water and the direction of ground water flow.
 - (B) The proximity and withdrawal rates of ground water users,
 - (C) The current and future uses of ground water in the area, and
 - (D) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality;
- (iii) The potential adverse effects of a release on surface water quality, taking into account:
- (A) The quantity and quality of ground water and the direction of ground water flow,
 - (B) The patterns of rainfall in the region,
 - (C) The proximity of the tank system to surface waters,
 - (D) The current and future uses of surface waters in the area and any water quality standards established for those surface waters, and
 - (E) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and
- (iv) The potential adverse effects of a release on the land surrounding the tank system, taking into account:
- (A) The patterns of rainfall in the region, and
 - (B) The current and future uses of the surrounding land.

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(3) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

- (i) Comply with the requirements of § 265.196, except paragraph (d), and
- (ii) Decontaminate or remove contaminated soil to the extent necessary to:
 - (A) Enable the tank system for which the variance was granted to resume operation with the capability for the detection of and respond to releases at least equivalent to the capability it had prior to the release; and
 - (B) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and
- (iii) If contaminated soil cannot be removed or decontaminated in accordance with paragraphs (g)(3)(ii) of this section, comply with the requirements of § 265.197(b).

(4) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraphs (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

- (i) Comply with the requirements of § 265.196(a), (b), (c), and (d); and
- (ii) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if ground water has been contaminated, the owner or operator must comply with the requirements of § 265.197(b); and
- (iii) If repairing, replacing or reinstalling the tank system, provide secondary containment in accordance with the requirements of paragraphs (a) through (f) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in § 265.192 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and ground water or surface water has not been contaminated.

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(h) The following procedures must be followed in order to request a variance from secondary containment:

(1) The Department must be notified in writing by the owner or operator that he/she intends to conduct and submit a demonstration for a variance from secondary containment as allowed in paragraph (g) according to the following schedule:

(i) For existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with paragraph (a) of this section.

(ii) For new tank systems, at least 30 days prior to entering into a contract for installation.

(2) As part of the notification, the owner or operator must also submit to the Department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in paragraphs (g)(1) or (g)(2) of this section;

(3) The demonstration for a variance must be completed within 180 days after notifying the Department of an intent to conduct the demonstration; and

(4) The Department will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The Department also will hold a public hearing, in response to a request or at its own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(5) The Department will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the Department receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in paragraph (h)(4) of this section is extended, the 90-day time period will be similarly extended.

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(i) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, must comply with the following:

(1) For non-enterable underground tanks, a leak test that meets the requirements of § 265.191(b)(5) must be conducted at least annually.

(2) For other than non-enterable underground tanks and for all ancillary equipment, an annual leak test, as described in paragraph (i)(1) of this section, or an internal inspection or other tank integrity examination by an independent, qualified, registered professional engineer that addresses cracks, leaks, corrosion, and erosion must be conducted at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

[NOTE - The practices described in the American Petroleum Institute (API) Publication Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks", 4th edition, 1981, may be used where applicable, as guidelines for assessing the overall condition of the tank system.]

(3) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with paragraphs (i)(1) through (i)(3) of this section.

(4) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in paragraphs (i)(1) through (i)(3) of this section, the owner or operator must comply with the requirements of § 265.196.

§ 265.194 General operating requirements.

(a) Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

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- (3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.
- (c) The owner or operator must comply with the requirements of § 265.196 if a leak or spill occurs in the tank system.

§ 265.195 Inspections.

- (a) The owner or operator must develop and follow a schedule and procedure for inspecting overfill controls daily.
- (b) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.
- (c) Except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:
 - (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;
 - (2) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;
 - (3) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and
 - (4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

[NOTE - For purposes of this section, “each operating day” is defined as “every day the tank is in operation (i.e., storing or treating hazardous waste) and not necessarily just on days the facility is open for business.” Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he/she finds. Section 265.196 requires the owner or operator to notify the Director within 24 hours of confirming a leak. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of a release.]

- (d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) through (c)(4) of this section. Use of the alternate inspection schedule must be documented in the facility’s operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Colorado Environmental Leadership and EPA Performance Track member facilities may inspect on a less frequent basis, upon approval by the Department, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Colorado Environmental Leadership and EPA Performance Track member facility must follow the procedures described in § 264.15(b)(5).

(f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1) through (4), must be inspected at least once each operating day.

(g) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter, and

(2) All sources of impressed current must be inspected and/or tested as appropriate, at least bimonthly (i.e., every other month).

[NOTE - The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85) - Control of External Corrosion on Metallic Buried, or Submerged Liquid Storage Systems", and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

(h) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) through (c) of this section.

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(a) **Cessation of Use; prevent flow or addition of wastes.** The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) **Removal of waste from tank system or secondary containment system.**

(1) If the release was from the tank system, the owner/operator must, within 24 hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

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(2) If the material released was to a secondary containment system all released materials must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) **Containment of visible releases to the environment.** The owner/operator must immediately conduct a visual inspection of the release and based upon that inspection:

- (1) Prevent further migration of the leak or spill to soils or surface water; and
- (2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) **Notifications, reports.**

(1) Any release to the environment, except as provided in paragraph (d)(2) of this section, must be reported to the Department within 24 hours of its detection. If the release has been reported pursuant to 40 CFR Part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous waste that is:

- (i) Less than or equal to a quantity of one (1) pound and
- (ii) Immediately contained and cleaned-up is exempted from the requirements of this paragraph.

(3) Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Department:

- (i) Likely route of migration of the release;
- (ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);
- (iii) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Department as soon as they become available.
- (iv) Proximity to downgradient drinking water, surface water, and population areas; and
- (v) Description of response actions taken or planned.

(e) **Provision of secondary containment, repair, or closure.**

(1) Unless the owner/operator satisfies the requirements of paragraphs (e)(2) through (4) of this section, the tank system must be closed in accordance with § 265.197.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

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(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of § 265.193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an above-ground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of paragraph (f) of this section are satisfied. If a component is replaced to comply with the requirements of this subparagraph, that component must satisfy the requirements for new tank systems or components in §§ 265.192 and 265.193. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with § 265.193 prior to being returned to use.

(f) **Certification of major repairs.** If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with § 100.12(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Department within seven days after returning the tank system to use.

[NOTE - The EPA or the Department may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA sections 3004 (v), 3008(h), or 7003(a) or issue an order under § 265.5 of these regulations (CCR 25-15-301 (4)) requiring corrective action or such other response as deemed necessary to protect human health or the environment.]

[NOTE - See § 265.15(c) for the requirements necessary to remedy a failure. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of certain releases.]

§ 265.197 Closure and post-closure care.

(a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless § 261.3(d) of these regulations applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Subpart G of this part and Part 266 of these regulations.

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(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (a) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all the requirements for landfills specified in Subpart G of this part and Part 266 of these regulations.

(c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of § 265.193(b) through (f) and is not exempt from the secondary containment requirements in accordance with § 265.193(g), then:

(1) The closure plan for the tank system must include both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section.

(2) A contingent post-closure plan for complying with paragraph (b) of this section must be prepared and submitted as part of the permit application.

(3) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under paragraph (a) of this section.

(4) Financial assurance must be based on the cost estimates in paragraph (c)(3) of this section.

(5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under Subpart G of this part and Part 266 of these regulations.

§ 265.198 Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in tank systems, unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(i) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of these regulations, and

(ii) Section 265.17(b) is complied with;

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- (2) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or
 - (3) The tank system is used solely for emergencies.
- (b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in a tank must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code", (1977 or 1981), (incorporated by reference, see § 260.11).

§ 265.199 Special requirements for incompatible wastes.

- (a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank system, unless § 265.17(b) is complied with.
- (b) Hazardous waste must not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless § 265.17(b) is complied with.

§ 265.200 Waste Analysis and trial tests.

In addition to performing the waste analysis required by § 265.13, the owner or operator must, whenever a tank system is to be used to treat chemically or to store a hazardous waste that is substantially different from waste previously treated or stored in that tank system; or treat chemically a hazardous waste with a substantially different process than any previously used in that tank system:

- (a) Conduct waste analyses and trial treatment or storage tests (e.g., bench-scale or pilot-plant scale tests): or
- (b) Obtain written documented information on similar waste under similar operating conditions to show that the proposed treatment or storage will meet the requirements of § 265.194(a).

Note: Section 265.13 requires the waste analysis plan to include analyses needed to comply with §§ 265.198 and 265.199. Section 265.73 requires the owner or operator to place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

§ 265.201 Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks.

(a) The requirements of this section apply to small quantity generators of more than 100 kg but less than 1,000 kg of hazardous waste in a calendar month, that accumulate hazardous waste in tanks for less than 180 days (Or 270 days if the generator must ship the waste greater than 200 miles), and do not accumulate over 6,000 kg on-site at any time.

(b) Generators of between 100 and 1,000 kg/mo hazardous waste must comply with the following general operating requirements:

(1) Treatment or storage of hazardous waste in tanks must comply with § 265.17(b).

(2) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(3) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

NOTE: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).

(c) Except as noted in paragraph (d) of this section, generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present:

(1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is good working order;

(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3);

(4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

NOTE: As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction he/she finds.

(d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1) through (5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) **{Reserved}**

(f) Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

NOTE: At closure, as throughout the operation period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of these regulations, that any solid waste removed from his/her tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of these regulations.

(g) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:

(1) Ignitable or reactive waste must not be placed in a tank, unless:

(i) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that (A) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of these regulations, and (B) § 265.17(b) is complied with; or

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(iii) The tank is used solely for emergencies.

(2) The owner or operator of a facility which treats or stores ignitable or reactive wastes in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981) (incorporated by reference, see § 260.11).

(h) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:

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(1) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same tank, unless § 265.17(b) is complied with.

(2) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless § 265.17(b) is complied with.

§ 265.202 Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of Subparts AA, BB, and CC of this part.

Subpart K -- Surface Impoundments

§ 265.220 Applicability. *,**

The regulations in this Subpart apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as § 265.1 provides otherwise.

* Any point source discharge from a surface impoundment to waters of the United States is subject to the requirements of Section 402 of the Clean Water Act, as amended. Spills may be subject to Section 311 of that Act.

** Volatile organic compounds stored or treated in a surface impoundment are subject to the requirements of Colorado Air Quality Control Commission Regulation number 7.

§ 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners, and a leachate collection and removal system between the liners, and operate the leachate collection and removal system, in accordance with § 264.221(c), unless exempted under § 264.221(d), (e), or (f), of these regulations.

(b) The owner or operator of each unit referred to in paragraph (a) of this section must notify the Department at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

(c) The owner or operator of any replacement surface impoundment unit is exempt from paragraph (a) of this section if:

(1) The existing unit was constructed in compliance with the design standards of § 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act [42 U.S.C. § 6924(o)]; and

- (2) There is no reason to believe that the liner is not functioning as designed.
- (d) The double liner requirement set forth in paragraph (a) of this section may be waived by the Department for any monofill if:
 - (1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in § 261.24 of these regulations, with EPA Hazardous Waste Numbers D004 through D017; and
 - (2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of paragraph (a) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment must comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action;
 - (B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in 40 CFR § 144.3); and
 - (C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under Section 3005(c) of the Federal Act; or
 - (ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.
- (e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of paragraph (a) of this section and in good faith compliance with paragraph (a) of this section and with guidance documents governing liners and leachate collection systems under paragraph (a) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to paragraph (a) of this section will be required for such unit by the Department when issuing the first permit to such facility, except that the Department will not be precluded from requiring installation of a new liner when the Department has reason to believe that any liner installed pursuant to the requirements of paragraph (a) of this section is leaking.

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(f) A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. Except as provided in paragraph (b) of this Section, there must be at least 60 centimeters (two feet) of freeboard.

(g) A freeboard level less than 60 centimeters (two feet) may be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his/her knowledge and opinion, prevent overtopping of the dike. The certification, along with a written identification of alternate design features or operating plans preventing overtopping, must be maintained at the facility and submitted to the Department.

(h) Surface impoundments that are newly subject to RCRA section 3005(j)(1) [42 U.S.C. § 6925(j)(1)] due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with paragraphs (a), (c) and (d) of § 265.221 not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under Part 268 of these regulations or the granting of an extension to the effective date of a prohibition pursuant to 40 CFR § 268.5, within this 48-month period.

§ 265.222 Action leakage rate.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must submit a proposed action leakage rate to the Department when submitting the notice required under § 265.221(b). Within 60 days of receipt of the notification, the Department will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Department before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Department shall approve an action leakage rate for surface impoundment units subject to § 265.221(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

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(c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under § 265.226(b), to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and if the unit closes in accordance with § 265.228(a)(2), monthly during the post-closure care period when monthly monitoring is required under § 265.226(b).

§ 265.223 Containment system.

All earthen dikes must have a protective cover, such as grass, shale, or rock, to minimize wind and water erosion and to preserve their structural integrity.

§ 265.224 Response actions.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must submit a response action plan to the Department when submitting the proposed action leakage rate under § 265.222. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

- (1) Notify the Department in writing of the exceedence within 7 days of the determination;
- (2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
- (3) Determine to the extent practicable the location, size, and cause of any leak;
- (4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;
- (5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

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- (6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Department a report summarizing the results of any remedial actions taken and actions planned.
- (c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:
- (1)(i) Assess the source of liquids and amounts of liquids by source,
 - (ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
 - (iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or
 - (2) Document why such assessments are not needed.

§ 265.225 Waste analysis and trial tests.

- (a) In addition to the waste analyses required by § 265.13, whenever a surface impoundment is to be used to:
- (1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or
 - (2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment; the owner or operator must, before treating the different waste or using the different process:
 - (i) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests); or
 - (ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this treatment will comply with § 265.17(b).

§ 265.226 Monitoring and inspection.

(a) The owner or operator must inspect:

(1) The freeboard level at least once each operating day to ensure compliance with § 265.222, and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

(b)(1) An owner or operator required to have a leak detection system under § 265.221(a) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Department based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with § 265.222(a).

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§ 265.228 - Closure and post-closure care.

(a) At closure, the owner or operator must:

(1) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of these regulations applies; or

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(2) Close the impoundment and provide post-closure care for a landfill under Subpart G and § 265.310, including the following:

- (i) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;
- (ii) Stabilize remaining wastes to a bearing capacity sufficient to support the final cover; and
- (iii) Cover the surface impoundment with a final cover designed and constructed to:
 - (A) Provide long-term minimization of the migration of liquids through the closed impoundment;
 - (B) Function with minimum maintenance;
 - (C) Promote drainage and minimize erosion or abrasion of the cover;
 - (D) Accommodate settling and subsidence so that the cover's integrity is maintained; and
 - (E) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) In addition to the requirements of Subpart G and § 265.310, during the post-closure care period, the owner or operator of a surface impoundment in which wastes, waste residues, or contaminated materials remain after closure in accordance with the provisions in paragraph (a)(2) of this section must:

- (1) Maintain the integrity and effectiveness of the final cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;
- (2) Maintain and monitor the leak detection system in accordance with § 264.221(c)(2)(iv) and (3) of these regulations and § 265.226(b) and comply with all other applicable leak detection system requirements of this part;
- (3) Maintain and monitor the ground water monitoring system and comply with all other applicable requirements of Subpart F of this part; and
- (4) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

§ 265.229 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment unless the waste and impoundment satisfy all applicable requirements of Part 268, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of these regulations; and

(2) Section 265.17(b) is complied with; or

(b)(1) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(2) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his/her knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(3) The certification and the basis for it are maintained at the facility and submitted to the Department; or

(c) The surface impoundment is used solely for emergencies.

§ 265.230 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (See Appendix V for examples must not be placed in the same surface impoundment, unless § 265.17(b) is complied with.

§ 265.231 Authority to Impose Requirements on Existing Surface Impoundments.

Notwithstanding any other provisions in these regulations applying to surface impoundments, in the case of any existing surface impoundment from which the Department determines hazardous constituents are likely to migrate into groundwater, the Department is authorized to impose such requirements as may be necessary to protect human health and the environment, including the minimum technological requirements of Part 264 which would apply to such impoundments if they were new.

§ 265.232 Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of Subparts BB and CC of this part.

Subpart L -- Waste Piles

§ 265.250 Applicability.

The regulations in this subpart apply to owners and operators of facilities that treat or store hazardous waste in piles, except as § 265.1 provides otherwise. Alternatively, a pile of hazardous waste may be managed as a landfill under Subpart N.

§ 265.251 Protection from wind.

The owner or operator of a pile containing hazardous waste which could be subject to dispersal by wind must cover or otherwise manage the pile so that wind dispersal is controlled.

§ 265.252 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must analyze a representative sample of waste from each incoming movement before adding the waste to any existing pile, **unless** (1) The only wastes the facility receives which are amenable to piling are compatible with each other, or (2) the waste received is compatible with the waste in the pile to which it is to be added. The analysis conducted must be capable of differentiating between the types of hazardous waste the owner or operator places in piles, so that mixing of incompatible waste does not inadvertently occur. The analysis must include a visual comparison of color and texture.

§ 265.253 Containment.*

If leachate or run-off from a pile is a hazardous waste, then either:

- (a)(1) The pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage;
- (2) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm;
- (3) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm; and

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- (4) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously to maintain design capacity of the system; or
- (b)(1) The pile must be protected from precipitation and run-on by some other means; and
- (2) No liquids or wastes containing free liquids may be placed in the pile.
- (c) [RESERVED]

* If collected leachate or run-off is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.

§ 265.254 Design and operating requirements.

The owner or operator of each new waste pile on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each such replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with §§ 264.251(c), unless exempted under § 264.251(d), (e), or (f), of these regulations; and must comply with the procedures of § 265.221(b). "Construction commences" is as defined in § 260.10 of these regulations under "existing facility".

§ 265.255 Action leakage rates.

(a) The owner or operator of waste pile units subject to § 265.254 must submit a proposed action leakage rate to the Department when submitting the notice required under § 265.254. Within 60 days of receipt of the notification, the Department will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Department before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

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(b) The Department shall approve an action leakage rate for waste pile units subject to § 265.254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under § 265.260, to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period.

§ 265.256 Special requirements for ignitable or reactive waste.

(a) Ignitable or reactive wastes must not be placed in a pile, unless the waste and pile satisfy all applicable requirements of part 268, and:

(1) Addition of the waste to an existing pile (i) results in the waste or mixture no longer meeting the definition of ignitable or reactive waste under § 261.21 or § 261.23 of these regulations, and (ii) complies with § 265.17(b); or

(2) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

§ 265.257 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same pile, unless § 265.17(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

(c) Hazardous waste must not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with § 265.17(b).

§ 265.258 Closure and post-closure care.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of these regulations applies; or

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he/she must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 265.310).

§ 265.259 Response actions.

(a) The owner or operator of waste pile units subject to § 265.254 must submit a response action plan to the Department when submitting the proposed action leakage rate under § 265.255. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator must:

- (1) Notify the Department in writing of the exceedence within 7 days of the determination;
- (2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
- (3) Determine to the extent practicable the location, size, and cause of any leak;
- (4) Determine whether waste receipts should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;
- (5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

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- (6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Department a report summarizing the results of any remedial actions taken and actions planned.
- (c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:
- (1)(i) Assess the source of liquids and amounts of liquids by source,
 - (ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
 - (iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or
 - (2) Document why such assessments are not needed.

§ 265.260 Monitoring and inspection.

An owner or operator required to have a leak detection system under § 265.254 must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

Subpart M -- Land Treatment

§ 265.270 Applicability.

The regulations in this subpart apply to owners and operators of hazardous waste land treatment facilities, except as § 265.1 provides otherwise.

§ 265.271 [RESERVED]

§ 265.272 General operating requirements.

- (a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less hazardous or non-hazardous by degradation, transformation, or immobilization processes occurring in or on the soil.
- (b) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a 100-year storm.
- (c) The owner or operator must design, construct, operate, and maintain a run-off management system capable of collecting a water volume at least equivalent to a 24-hour, 100-year storm.*

* If the collected run-off is a hazardous waste under Part 261 of these Regulations, it must be managed as a hazardous waste in accordance with all applicable requirements of Parts 262, 263, and 265 of these Regulations. If the collected run-off is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.

- (d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.
- (e) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

§ 265.273 Waste analysis.

In addition to the waste analyses required by § 265.13, before placing a hazardous waste in or on a land treatment facility, the owner or operator must:

- (a) Determine the concentrations in the waste of any substances which equal or exceed the maximum concentrations contained in Table 1 of § 261.24 of these regulations that cause a waste to exhibit the Toxicity Characteristic;
- (b) For any waste listed in Part 261, Subpart D, of these regulations, determine the concentrations of any substances which caused the waste to be listed as a hazardous waste; and
- (c) If food chain crops are grown, determine the concentrations in the waste of each of the following constituents: arsenic, cadmium, lead, and mercury, **unless** the owner or operator has written, documented data that show that the constituent is not present.

§§ 265.274 through 265.275 [RESERVED]

§ 265.276 Food chain crops.

(a)(1) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, must notify the Department of such activity or plans.*

* The growth of food chain crops at a facility which has never before been used for this purpose is a significant change in process under § 100.11(d) of these regulations. Owners or operators of such land treatment facilities who propose to grow food chain crops must comply with § 100.11(d) of these regulations.

(2) If, pursuant to this section, the Department determines that any restrictions on cultivation of food-chain crops are necessary, an environmental covenant must be created and recorded.

(b)(1) Food chain crops must not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury, or other constituents identified under § 265.273(b):

(i) Will not be transferred to the food portion of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

(ii) Will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(2) The information necessary to make the demonstration required by paragraph (b)(1) of this section must be kept at the facility and must, at a minimum:

(i) Be based on tests for the specific waste and application rates being used at the facility; and

(ii) Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods, and statistical procedures.

(c) Food chain crops must not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of paragraph (c)(1)(i) through (iii) of this section or all requirements of paragraph (c)(2)(i) through (iv) of this section are met.

(1)(i) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

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(ii) The annual application of cadmium from waste does not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate does not exceed:

Time period	Annual Cd application rate (kg/ha)
Present to June 30, 1984	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987	0.5

(iii)(A) The cumulative application of cadmium from waste does not exceed the levels in either paragraph (c)(1)(iii)(A) of this section or paragraph (c)(1)(iii)(B) of this Section.

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)	
	Background soil pH less than 6.5	Background soil pH greater than 6.5
Less than 5	5	5
5 to 15	5	10
Greater than 15	5	20

(B) For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below: Provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown.

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)
Less than 5	5
5 to 15	10
Greater than 15	20

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(2)(i) The only food chain crop produced is animal feed.

(ii) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown.

(iii) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

(iv) An environmental covenant must be created and recorded in accordance with § 25-15-317, C.R.S. The covenant must state that the property has received waste at high cadmium application rates and must prohibit cultivation of food-chain crops except in accordance with paragraph (c)(2) of this section.*

* As required by § 265.73, if an owner or operator grows food chain crops on his/her land treatment facility, he/she must place the information developed in this section in the operating record of the facility.

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§ 265.278 Unsaturated zone (zone of aeration) monitoring.*

(a) The owner or operator must have in writing, and must implement, an unsaturated zone monitoring plan which is designed to:

(1) Detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility, and

(2) Provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring must be conducted before or in conjunction with the monitoring required under paragraph (a)(1) of this section.

* As required by § 265.73, all data and information developed by the owner or operator under this section must be placed in the operating record of the facility.

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(b) The unsaturated zone monitoring plan must include, at a minimum:

- (1) Soil monitoring using soil cores, and
- (2) Soil-pore water monitoring using devices such as lysimeters.

(c) To comply with paragraph (a)(1) of this section, the owner or operator must demonstrate in his/her unsaturated zone monitoring plan that:

- (1) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;
- (2) The number of soil and soil-pore water samples to be taken is based on the variability of:
 - (i) The hazardous waste constituents (as identified in § 265.273(a) and (b)) in the waste and in the soil; and
 - (ii) The soil type(s); and
- (3) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time, and rate of waste application, proximity to ground water, and soil permeability.

(d) The owner or operator must keep at the facility his/her unsaturated zone monitoring plan, and the rationale used in developing this plan.

(e) The owner or operator must analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under § 265.273 (a) and (b).

§ 265.279 Recordkeeping.

The owner or operator must include hazardous waste application dates and rates in the operating record required under § 265.73.

§ 265.280 Closure and post-closure.

(a) In the closure plan under § 265.112 and the post-closure plan under § 265.118, the owner or operator must address the following objectives and indicate how they will be achieved;

- (1) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the ground water;

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- (2) Control of the release of contaminated run-off from the facility into surface water;
 - (3) Control of the release of airborne particulate contaminants caused by wind erosion;
 - (4) Compliance with § 265.276 concerning the growth of food-chain crops; and
 - (5) Compliance with the environmental covenant requirements set forth in C.R.S. §§ 25-15-317 et seq.
- (b) The owner or operator must consider at least the following factors in addressing the closure and post-closure care objectives of paragraph (a) of this section:
- (1) Type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;
 - (2) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;
 - (3) Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water and drinking water sources);
 - (4) Climate, including amount, frequency, and pH of precipitation;
 - (5) Geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;
 - (6) Unsaturated zone monitoring information obtained under § 265.278; and
 - (7) Type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.
- (c) The owner or operator must consider at least the following methods in addressing the closure and post-closure care objectives of paragraph (a) of this section:
- (1) Removal of contaminated soils;
 - (2) Placement of a final cover, considering:
 - (i) Functions of the cover (e.g., infiltration control, erosion and run-off control, and wind erosion control); and
 - (ii) Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover;
 - (3) Monitoring of ground water.

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(d) In addition to the requirements of Subpart G of this part, during the closure period, the owner or operator of a land treatment facility must:

- (1) Continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;
- (2) Maintain the run-on control system required under § 265.272(b); and
- (3) Maintain the run-off management system required under § 265.272(c); and
- (4) Control wind dispersal of particulate matter which may be subject to wind dispersal.
- (5) If the land treatment unit will require post-closure care as a land disposal facility, submit a draft environmental covenant (or proposed modifications to an existing environmental covenant) for the Department's review and approval, and upon approval, record the approved covenant or modifications, as appropriate.

(e) For the purpose of complying with § 265.115, when closure is completed the owner or operator may submit to the Department certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with specifications in the approved closure plan.

(f) In addition to the requirements of § 265.117, during the post-closure care period the owner or operator of a land treatment unit must:

- (1) Continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;
- (2) Restrict access to the unit as appropriate for its post-closure use;
- (3) Assure that growth of food chain crops complies with § 265.276; and
- (4) Control wind dispersal of hazardous waste.

§ 265.281 Special requirements for ignitable or reactive waste.

The owner or operator must not apply ignitable or reactive waste to the treatment zone unless the waste and the treatment zone meet all applicable requirements of part 268, and:

(a) The waste is immediately incorporated into the soil so that:

- (1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23, of these regulations; and

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- (2) Section 265.17(b) is complied with; or
- (b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

§ 265.282 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials (See Appendix V for examples), must not be placed in the same land treatment area, unless § 265.17(b) is complied with.

Subpart N -- Landfills

§ 265.300 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as § 265.1 provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by this subpart.

§ 265.301 Design and Operating Requirements.

- (a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.301(d), (e), or (f) of these regulations.
- (b) The owner or operator of each unit referred to in paragraph (a) of this section must notify the Department at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.
- (c) The owner or operator of any replacement landfill unit is exempt from paragraph (a) of this section if:
 - (1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act [42 U.S.C. § 6924(o)]; and
 - (2) There is no reason to believe that the liner is not functioning as designed.

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(d) The double liner requirement set forth in paragraph (a) of this section may be waived by the Department for any monofill if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the waste hazardous for reasons other than the Toxicity Characteristic in § 261.24 of these regulations, with EPA Hazardous Waste Numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking;

(B) The monofill is located more than one-fourth mile from an underground source of drinking water as defined in 40 CFR § 144.3; and

(C) The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with RCRA permits; or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of paragraph (a) of this section and in good faith compliance with paragraph (a) of this section and with guidance documents governing liners and leachate collection systems under paragraph (a) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to paragraph (a) of this section will be required for such unit by the Department when issuing the first permit to such facility, except that the Department will not be precluded from requiring installation of a new liner when the Department has reason to believe that any liner installed pursuant to the requirements of paragraph (a) of this section is leaking.

(f) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(g) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.*

* If the collected run-off is a hazardous waste under Part 261 of these Regulations, it must be managed as a hazardous waste in accordance with all applicable requirements of Parts 262, 263, and 265 of these regulations. If the collected run-off is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.

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(h) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

(Comment: As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.312, 265.313, and 265.314. As required by § 265.73, the owner or operator must place the results of these analyses in the operating record of the facility.)

§ 265.302 Action leakage rate.

(a) The owner or operator of landfill units subject to § 265.301(a) must submit a proposed action leakage rate to the Department when submitting the notice required under § 265.301(b). Within 60 days of receipt of the notification, the Department will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Department before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Department shall approve an action leakage rate for landfill units subject to § 265.301(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under § 265.304 to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under § 265.304(b).

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must submit a response action plan to the Department when submitting the proposed action leakage rate under § 265.302. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

- (1) Notify the Department in writing of the exceedence within 7 days of the determination;
- (2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
- (3) Determine to the extent practicable the location, size, and cause of any leak;
- (4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;
- (5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and
- (6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:

- (1)(i) Assess the source of liquids and amounts of liquids by source,
- (ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

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(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

§ 265.304 Monitoring and inspection.

(a) An owner or operator required to have a leak detection system under § 265.301(a) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(b) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(c) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Department based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with § 265.302(a).

§§ 265.305 through 265.308 [Reserved]

§ 265.309 Surveying and recordkeeping.

The owner or operator of a landfill must maintain the following items in the operating record required in § 265.73:

(a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location in 3 dimensions of each hazardous waste type within each cell.

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§ 265.310 Closure and post-closure care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

- (1) Provide long-term minimization of migration of liquids through the closed landfill;
- (2) Function with minimum maintenance;
- (3) Promote drainage and minimize erosion or abrasion of the cover;
- (4) Accommodate settling and subsidence so that the cover's integrity is maintained; and
- (5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in §§ 265.117 through 265.120 including maintenance and monitoring throughout the post-closure care period. The owner or operator must:

- (1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;
- (2) Maintain and monitor the leak detection system in accordance with § 264.301(c)(3)(iv) and (4) of these regulations and § 265.304(b), and comply with all other applicable leak detection system requirements of this part;
- (3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F of this part;
- (4) Prevent run-on and run-off from eroding or otherwise damaging the final cover;
- (5) Protect and maintain surveyed benchmarks used in complying with § 265.309; and
- (6) Comply with the requirements of the environmental covenant.

§ 265.311 [RESERVED]

§ 265.312 Special requirements for ignitable or reactive waste.

(a) Except as provided in paragraph (b) of this section, and in § 265.316, ignitable or reactive waste must not be placed in a landfill, unless the waste and landfill meets all applicable requirements of Part 268, and:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of these regulations; and

(2) Section 265.17(b) is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in subpart D of Part 268, ignitable wastes in containers may be landfilled without meeting the requirements of paragraph (a) of this section, provided that the wastes are disposed of in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes must be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other noncombustible material to minimize the potential for ignition of the wastes; and must not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

§ 265.313 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (See Appendix V for examples) must not be placed in the same landfill cell, unless § 265.17(b) is complied with.

§ 265.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(b) Containers holding free liquids must not be placed in a landfill unless:

(1) All free-standing liquid

(i) has been removed by decanting, or other methods,

(ii) has been mixed with sorbent or solidified so that free standing liquid is no longer observed; or

(iii) had been otherwise eliminated; or

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- (2) The container is very small, such as an ampule; or
 - (3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or
 - (4) The container is a lab pack as defined in § 265.316 and is disposed of in accordance with § 265.316.
- (c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of these regulations.
- (d) [RESERVED]
- (e) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in paragraph (e)(1) of this section; materials that pass one of the tests in paragraph (e)(2) of this section; or materials that are determined by EPA to be nonbiodegradable through the Part 260 petition process.
- (1) Nonbiodegradable sorbents.
 - (i) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon); or
 - (ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or
 - (iii) Mixtures of these nonbiodegradable materials.

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(2) Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under the Organization for Economic Cooperation and Development (OECD) test 301B: [CO₂ Evolution (Modified Sturm Test) July 1992].

(f) The placement of any free liquid, including a hazardous waste, in a landfill is prohibited.

§ 265.315 Special requirements for containers.

Unless they are very small, such as an ampule, containers must be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

§ 265.316 Disposal of small containers of hazardous waste in overpacked drums (lab packs).

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

(a) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178 and 179), if those regulations specify a particular inside container for the waste.

(b) The inside containers must be overpacked in an open head DOT specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416-liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with § 265.314(f), to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after it has been packed with inside containers and sorbent material.

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- (c) The sorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with § 265.17(b).
- (d) Incompatible wastes, as defined in § 260.10(a) of these regulations, must not be placed in the same outside container.
- (e) Reactive waste, other than cyanide- or sulfide-bearing waste as defined in § 261.23(a)(5) of these regulations, must be treated or rendered non-reactive prior to packaging in accordance with paragraphs (a) through (d) of this section. Cyanide- and sulfide-bearing reactive waste may be packaged in accordance with paragraphs (a) through (d) of this section without first being treated or rendered non-reactive.
- (f) Such disposal is in compliance with the requirements of Part 268. Persons who incinerate lab packs according to the requirements in § 268.42(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums must meet the DOT specifications in 49 CFR § 173.12 and be overpacked according to the requirements in paragraph (b) of this section.

Subpart O -- Incinerators

§ 265.340 Applicability.

- (a) (Effective January 1, 1986) The regulations in this subpart apply to owners or operators of facilities that incinerate hazardous waste, except as § 264.1 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:
 - (1) Owners or operators of hazardous waste incinerators (as defined in § 260.10 of these regulations); and
 - (2) Owners or operators who burn hazardous waste in boilers or in industrial furnaces in order to destroy them or who burn hazardous waste in boilers or in industrial furnaces for any recycling purpose and elect to be regulated under this subpart.
- (b) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of this subpart, except § 265.351 (Closure), provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in Part 261, Appendix VIII, of these regulations and such documentation is retained at the facility, if the waste to be burned is:
 - (1) Listed as a hazardous waste in Part 261, Subpart D, these regulations solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

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- (2) Listed as a hazardous waste in Part 261, Subpart D, of these regulations solely because it is reactive (Hazard Code R) for characteristics other than those listed in § 261.23(a)(4) and (5), and will not be burned when other hazardous wastes are present in the combustion zone; or
- (3) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under Part 261, Subpart C, of these regulations; or
- (4) A hazardous waste solely because it possesses the reactivity characteristics described by § 261.23(a)(1), (2), (3), (6), (7), or (8) of these regulations, and will not be burned when other hazardous wastes are present in the combustion zone.

§ 265.341 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must sufficiently analyze any waste which he/she has not previously burned in his/her incinerator to enable him/her to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be emitted. At a minimum, the analysis must determine:

- (a) Heating value of the waste;
- (b) Halogen content and sulfur content in the waste; and
- (c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

§ 265.342 - § 265.344 [RESERVED]

§ 265.345 General operating requirements.

During start-up and shut-down of an incinerator, the owner or operator must not feed hazardous waste unless the incinerator is at steady state (normal) conditions of operation, including steady state operating temperature and air flow.

§ 265.346 [RESERVED]

§ 265.347 Monitoring and inspections.

The owner or operator must conduct, as a minimum, the following monitoring and inspections when incinerating hazardous waste:

(a) Existing instruments which relate to combustion and emission control must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions must be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include these measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(b) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

§ 265.348 - § 265.350 [RESERVED]

§ 265.351 Closure*

At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator.

* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(d) of these regulations, that the residue removed from his/her incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262-266 of these regulations.

§ 265.352 Interim Status Incinerators Burning Particular Hazardous Wastes.

(a) Owners or operators of incinerators subject to this subpart may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Department that they can meet the performance standards of Subpart O of Part 264 when they burn these wastes.

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(b) The following standards and procedures will be used in determining whether to certify an incinerator:

(1) The owner or operator will submit an application to the Department containing information demonstrating that the incinerator can meet the performance standards in Subpart O of Part 264 when they burn these wastes.

(2) The Department will issue a tentative decision as to whether the incinerator can meet the performance standards in Subpart O of Part 264. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Department will accept comment on the tentative decision for 60 days. The Department also may hold a public hearing upon request or at its discretion.

(3) After the close of the public comment period, the Department will issue a decision whether or not to certify the incinerator.

§ 265.353 - § 265.369 [RESERVED]

Subpart P -- Thermal Treatment

§ 265.370 Applicability. (Expires January 1, 1986)

The regulations in this Subpart apply to owners and operators of facilities that thermally treat hazardous waste in devices other than incinerators, except as § 265.1 provides otherwise. Thermal treatment in incinerators is subject to the requirements of Subpart O.

§ 265.370 Other thermal treatment. (Effective January 1, 1986)

The regulations in this Subpart apply to owners or operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion, except as § 265.1 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of Subpart O if the unit is an incinerator, and Subpart H of Part 265, if the unit is a boiler or an industrial furnace as defined in § 260.10.

§ 265.371 - § 265.372 [RESERVED]

§ 265.373 General operating requirements.

Before adding hazardous waste, the owner or operator must bring his/her thermal treatment process to steady state (normal) conditions of operation--including steady state operating temperature--using auxiliary fuel or other means, unless the process is a non-continuous (batch) thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

§ 265.374 [RESERVED]

§ 265.375 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must sufficiently analyze any waste which he/she has not previously treated in his/her thermal process to enable him/her to establish steady state (normal) or other appropriate (for a non-continuous process) operating conditions (including waste and auxiliary fuel feed) and to determine the type of pollutants which might be emitted. At a minimum, the analysis must determine:

- (a) Heating value of the waste;
- (b) Halogen content and sulfur content in the waste; and
- (c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

§ 265.376 [RESERVED]

§ 265.377 Monitoring and inspections.

- (a) The owner or operator must conduct, as a minimum, the following monitoring and inspections when thermally treating hazardous waste:
 - (1) Existing instruments which relate to temperature and emission control (if an emission control device is present) must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state or other appropriate thermal treatment conditions must be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

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(2) The stack plume (emissions), where present, must be observed visually at least hourly for normal appearance (color and opacity). The operator must immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(3) The complete thermal treatment process and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

§ 265.378 - § 265.380 [RESERVED]

§ 265.381 Closure.*

At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash) from the thermal treatment process or equipment.

* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of these regulations, that any solid waste removed from his/her thermal treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of these regulations.

§ 265.382 Open burning; waste explosives.

Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives must do so in accordance with the following table and in a manner that does not threaten human health or the environment.

Pounds of waste explosives or propellants	Minimum distance from open burning or detonation to the property of others
0 to 100	204 meters (670 feet).
101 to 1,000	380 meters (1,250 feet).
1,001 to 10,000	530 meters (1,730 feet).
10,001 to 30,000	690 meters (2,260 feet).

§ 265.383 Interim Status Thermal Treatment Devices Burning Particular Hazardous Waste.

(a) Owners or operators of thermal treatment devices subject to this Subpart may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Department that they can meet the performance standards of Subpart O of Part 264 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify a thermal treatment unit:

(1) The owner or operator will submit an application to the Department containing information demonstrating that the thermal treatment unit can meet the performance standard in Subpart O of Part 264 when they burn these wastes.

(2) The Department will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in Subpart O of Part 264. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment device is located. The Department will accept comment on the tentative decision for 60 days. The Department also may hold a public hearing upon request or at its discretion.

(3) After the close of the public comment period, the Department will issue a decision whether or not to certify the thermal treatment unit.

Subpart Q -- Chemical, Physical, and Biological Treatment

§ 265.400 Applicability.

The regulations in this subpart apply to owners and operators of facilities which treat hazardous wastes by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities, except as § 265.1 provides otherwise. Chemical, physical, and biological treatment of hazardous waste in tanks, surface impoundments, and land treatment facilities must be conducted in accordance with Subparts J, K, and M, respectively.

§ 265.401 General operating requirements.

- (a) Chemical, physical, or biological treatment of hazardous waste must comply with § 265.17(b).
- (b) Hazardous wastes or treatment reagents must not be placed in the treatment process or equipment if they could cause the treatment process or equipment to rupture, leak, corrode, or otherwise fail before the end of its intended life.
- (c) Where hazardous waste is continuously fed into a treatment process or equipment, the process or equipment must be equipped with a means to stop this inflow (e.g., a waste feed cut-off system or by-pass system to a standby containment device).*

* These systems are intended to be used in the event of a malfunction in the treatment process or equipment.

§ 265.402 Waste analysis and trial tests.

(a) In addition to the waste analysis required by § 265.13, whenever:

- (1) A hazardous waste which is substantially different from waste previously treated in a treatment process or equipment at the facility is to be treated in that process or equipment, or
- (2) A substantially different process than any previously used at the facility is to be used to chemically treat hazardous waste;

the owner or operator must, before treating the different waste or using the different process or equipment:

- (i) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests); or
- (ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions;

to show that this proposed treatment will meet all applicable requirements of § 265.401 (a) and (b).

§ 265.403 Inspections.

(a) The owner or operator of a treatment facility must inspect, where present:

- (1) Discharge control and safety equipment (e.g., waste feed cut-off systems, by-pass systems, drainage systems, and pressure relief systems) at least once each operating day, to ensure that it is in good working order;
- (2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges), at least once each operating day, to ensure that the treatment process or equipment is being operated according to its design;
- (3) The construction materials of the treatment process or equipment, at least weekly, to detect corrosion or leaking of fixtures or seams; and
- (4) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes), at least weekly, to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

§ 265.404 Closure.*

At closure, all hazardous waste and hazardous waste residues must be removed from treatment processes or equipment, discharge control equipment, and discharge confinement structures.

- * At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of these regulations, that any solid waste removed from his/her treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of these regulations.

§ 265.405 Special requirements for ignitable or reactive waste.

(a) Ignitable or reactive waste must not be placed in a treatment process or equipment unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that (i) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of these regulations, and (ii) § 265.17(b) is complied with; or

(2) The waste is treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react.

§ 265.406 Special requirements for incompatible wastes.

(a) Incompatible waste, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same treatment process or equipment, unless § 265.17(b) is complied with.

(b) Hazardous waste must not be placed in unwashed treatment equipment which previously held an incompatible waste or material, unless § 265.17(b) is complied with.

Subpart R -- Underground Injection

§ 265.430 Applicability.

Except as § 265.1 provides otherwise:

- (a) The owner or operator of a facility which disposes of hazardous waste by underground injection is excluded from the requirements of Subparts G and Part 266 of these regulations.
- (b) The requirements of this Subpart apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I under 40 CFR § 144.6(a) of these regulations and which are classified as Class IV under 40 CFR § 144.6(d).

Subparts S through V [Reserved]

Subpart W -- Drip Pads

§ 265.440 Applicability.

- (a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement at § 265.443(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.
- (b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under § 265.443(e) or § 265.443(f), as appropriate.
- (c) The requirements of this subpart are not applicable to the management of infrequent and incidental drippage in storage yards provided that:
 - (1) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan must describe how the owner or operator will do the following:

- (i) Clean up the drippage;

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- (ii) Document the cleanup of the drippage;
- (iii) Retain documents regarding cleanup for three years; and
- (iv) Manage the contaminated media in a manner consistent with federal regulations.

§ 265.441 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 265.440 of this subpart, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 265.443(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and re-certified annually until all upgrades, repairs or modifications necessary to achieve compliance with all of the standards of § 265.443 of this subpart are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 265.443 of this subpart, except the standards for liners and leak detection systems, specified in § 265.443(b) of this subpart.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b) of this subpart and submit the plan to the Director no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 265.443 of this subpart. The plan must be reviewed and certified by an independent, qualified registered professional engineer.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Director the as-built drawings for the drip pad together with a certification by an independent, qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of § 265.443(m) of this subpart or close the drip pad in accordance with § 265.445 of this subpart.

§ 265.442 Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed and operated in accordance with one of the following:

- (a) All of the applicable requirements of §§ 265.443 (except § 265.443(a)(4)), 265.444 and 265.445 of this subpart, or
- (b) All of the applicable requirements of §§ 265.443 (except § 265.443(b)), 265.444 and 265.445 of this subpart.

§ 265.443 Design and operating requirements.

(a) Drip pads must:

- (1) Be constructed of non-earthen materials, excluding wood and non-structurally supported asphalt;
- (2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;
- (3) Have a curb or berm around the perimeter;
- (4)(i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with § 265.442(b) instead of § 265.442(a).
- (ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for subsection (b).

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(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

Note: The Department will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) or the American Society of Testing Materials (ASTM) in judging the structural integrity requirement of this paragraph.

(b) If an owner/operator elects to comply with § 265.442(a) instead of § 265.442(b), the drip pad must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad; and

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest possible time.

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See § 265.443(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in § 265.440(b) of this subpart, the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system, or the drip pad is protected by a structure or cover, as described in § 265.440(b) of this subpart.

(f) Unless protected by a structure or cover, as described in § 265.440(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner/operator must determine if the residues are hazardous as per 6 CCR 1007-3 § 262.11 and, if so, must manage them under Parts 261-268, and Parts 99 and 100.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of the activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may cause, may have caused, or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that may cause, may have caused, or has caused a release of hazardous waste (e.g., upon detection of leakage by the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad and remove any leakage from below the drip pad, and establish a schedule for accomplishing clean up and repairs;

(iv) Within 24 hours after the discovery of the condition, notify the Director of the condition and, within 10 working days, provide a written notice to the Director with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

(2) The Director will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the Director in writing and provide a certification signed by an independent, qualified registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (m)(1)(iv) of this section.

(n) Should a permit be necessary, the Director will specify in the permit all design and operating practices necessary to ensure that the requirements of this section are satisfied.

(o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

§ 265.444 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots or foreign materials). Immediately after construction or installation, the liners must be inspected and certified as meeting the requirements of § 265.443 of this subpart by an independent, qualified registered professional engineer. The certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

- (1) Deterioration, malfunctions, or improper operation of run-off and run-on control systems;
- (2) The presence of leakage in and proper functioning of leakage detection system.
- (3) Deterioration or cracking of the drip pad surface.

Note: See § 265.443(m) for remedial action required if deterioration or leakage is detected.

§ 265.445 Closure.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

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(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator then finds that not all contaminated subsoils can be practically removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 265.310). For permitted units, the requirement to have a permit continues throughout the post-closure period.

(c)(1) The owner or operator of an existing drip pad, as defined in § 265.440 of this subpart, that does not comply with the liner requirements of § 265.443(b)(1) must:

(i) Include in the closure plan for the drip pad under § 265.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 265.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 265.112 and 265.144 of this part for closure and post-closure care of a drip pad subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

Subparts X - Z [Reserved]

Subpart AA -- Air Emission Standards for Process Vents

§ 265.1030 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 265.1).

(b) Except for §§ 265.1034, paragraphs (d) and (e), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in:

(1) A unit that is subject to the permitting requirements of Part 100, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of § 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Part 100, or

(3) A unit that is exempt from permitting under the provisions of § 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the requirements of § 261.6 of these regulations..

Note: The requirements of §§ 265.1032 through 265.1036 apply to process vents on hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4 and 265.1(c) are not affected by these requirements.

(c) [Reserved]

(d) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR Part 60, Part 61, or Part 63. The documentation of compliance under regulations at 40 CFR Part 60, Part 61, or Part 63 shall be kept with, or made readily available with, the facility operating record.

§ 265.1031 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 264.1031, the Act, and Parts 260 through 267.

§ 265.1032 Standards: Process vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction or air or steam stripping operations managing hazardous wastes with organic concentrations at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section, the closed-vent system and control device must meet the requirements of § 265.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of § 265.1034(c).

(d) When an owner or operator and the Director do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the test methods in § 265.1034(c) shall be used to resolve the disagreement.

§ 265.1033 Standards: Closed-vent systems and control devices.

(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2)(i) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup. All units that begin operation after December 21, 1990 must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 2-year implementation schedule does not apply to these units.

(ii) Any unit that begins operation after December 21, 1990, and is subject to the requirements of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(iii) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(iv) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (a)(2)(iii) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of § 265.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 EC. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame combustion zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater, if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e)(2) of this section.

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, of less than 18.3 m/s (60 ft/s), except as provided in paragraphs (d)(4)(ii) and (iii) of this section.

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than the velocity, V_{\max} , as determined by the method specified in paragraph (e)(4) of this section, and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{\max} , as determined by the method specified in paragraph (e)(5) of this section.

(6) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR Part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \left[\sum_{i=1}^n C_i H_i \right]$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 EC and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 EC;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 EC;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR Part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82 (incorporated by reference as specified in § 260.11); and

H_i = Net heat of combustion of sample component i , kcal/g mol at 25 EC and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83 (incorporated by reference as specified in § 260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR Part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max} , for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

where:

H_T = The net heating value as determined in paragraph (e)(2) of this section.

28.8 = Constant,

31.7 = Constant.

(5) The maximum allowed velocity in m/s, V_{\max} , for an air-assisted flare shall be determined by the following equation:

$$V_{\max}=8.706+0.7084(H_T)$$

where:

8.706 = Constant.

0.7084 = Constant.

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(f) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet, but before being combined with other vent streams.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of $\nabla 1$ percent of the temperature being monitored in EC or $\nabla 0.5$ EC, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of $\nabla 1$ percent of the temperature being monitored in EC or $\nabla 0.5$ EC, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

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(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of $\nabla 1$ percent of the temperature being monitored in EC or $\nabla 0.5$ EC, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of $\nabla 1$ percent of the temperature being monitored in degrees Celsius (EC) or $\nabla 0.5$ EC, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

(vii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly in the control device, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (f)(1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device, shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of § 265.1035(b)(4)(iii)(F).

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(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of § 265.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of § 265.1035(b)(4)(iii)(G).

(i) An owner or operator of an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(j) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in § 265.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(k) The owner or operator shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (j)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed-vent system components

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and connections using the procedures specified in § 265.1034(b) of this subpart to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (k)(1)(i) of this section, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in § 265.1034(b) of this subpart to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (k)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Director, except as provided for in paragraph (n) of this section, using the procedures specified in § 265.1034(b) of this subpart to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (k)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 265.1035 of this subpart.

(2) Each closed-vent system that is used to comply with paragraph (j)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year.

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(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 265.1035 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in paragraph (k)(3)(iii) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 265.1035 of this subpart.

(l) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(m) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under Part 100 of these regulations which implements the requirements of Part 264 Subpart X; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Subparts AA and CC of either this part or of Part 264; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR Part 61 or 40 CFR Part 63.

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- (2) Incinerated in a hazardous waste incinerator for which the owner or operator either:
 - (i) Has been issued a final permit under Part 100 which implements the requirements of Part 264, Subpart O; or
 - (ii) Has designed and operates the incinerator in accordance with the interim status requirements of Subpart O of this part.
- (3) Burned in a boiler or industrial furnace for which the owner or operator either:
 - (i) Has been issued a final permit under Part 100 which implements the requirements of Part 264, Subpart O of these regulations; or
 - (ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Subpart H of this part.
- (n) Any components of a closed-vent system that are designated, as described in § 265.1035(c)(9) of this subpart, as unsafe to monitor are exempt from the requirements of paragraph (k)(1)(ii)(B) of this section if:
 - (1) The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (k)(1)(ii)(B) of this section; and
 - (2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in paragraph (k)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.

§ 265.1034 Test methods and procedures.

- (a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.
- (b) When a closed-vent system is tested for compliance with no detectable emissions, as required in § 265.1033(k) of this subpart, the test shall comply with the following requirements:
- (1) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60.
 - (2) The detection instrument shall meet the performance criteria of Reference Method 21.
 - (3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.
 - (4) Calibration gases shall be:
 - (i) Zero air (less than 10 ppm of hydrocarbon in air).
 - (ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.
 - (5) The background level shall be determined as set forth in Reference Method 21.
 - (6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
 - (7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.
- (c) Performance tests to determine compliance with § 265.1032(a) and with the total organic compound concentration limit of § 265.1033(c) shall comply with the following:
- (1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:
 - (i) Method 2 in 40 CFR Part 60 for velocity and volumetric flow rate.
 - (ii) Method 18 in 40 CFR Part 60 for organic content.

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(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

$$E_h = Q_{sd} \left[\sum_{i=1}^n C_i M W_i \right] [0.0416][10^{-6}]$$

where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10⁻⁶ = Conversion from ppm, ppm⁻¹.

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(v) The annual total organic emission rate shall be determined by the following equation:

$$E_A = (E_h)(H)$$

where:

E_A = Total organic mass emission rate, kg/y;

E_h = Total organic mass flow rate for the process vent, kg/h ;

H = Total annual hours of operations for the affected unit, h .

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h , as determined in paragraph (c)(1)(iv) of this section) and by summing the annual total organic mass emission rates (E_A , as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

- (i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.
- (ii) Safe sampling platform(s).
- (iii) Safe access to sampling platform(s).
- (iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Director's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator must take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8260 of SW-846 (incorporated by reference under § 260.11).

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

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(e) The determination that distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the waste is first managed in a waste management unit, whichever is later; and

(2) For continuously generated waste, annually; or

(3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Director do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8260 of SW-846 (incorporated by reference under § 260.11) may be used to resolve the dispute.

§ 265.1035 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For facilities that comply with the provisions of § 265.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this subpart.

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(2) Up-to-date documentation of compliance with the process vent standards in § 265.1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan); and

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

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(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with § 265.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by § 265.1033(j).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Director that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in § 265.1033(d).

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(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of § 265.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of § 265.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

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(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with § 265.1033(f)(1) and (f)(2).

(3) Monitoring, operating and inspection information required by paragraphs (f) through (k) of § 265.1033 of this subpart.

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of 760 EC period when the combustion temperature is below 760 EC.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 percent or greater, period when the combustion zone temperature is more than 28 EC below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 EC below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section; or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 EC below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section; or

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(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with § 265.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with § 265.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 EC above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 EC above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 265.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 265.1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (c)(4) of this section of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For carbon adsorption systems operated subject to requirements specified in § 265.1033(g) or § 265.1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon.

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(7) For carbon adsorption systems operated subject to requirements specified in § 265.1033(h)(1), a log that records:

- (i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.
- (ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to § 265.1033(n) of this subpart shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of § 265.1033(n) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in § 265.1033(k) of this subpart, the following information shall be recorded:

- (i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.
- (ii) The date the leak was detected and the date of first attempt to repair the leak.
- (iii) The date of successful repair of the leak.
- (iv) Maximum instrument reading measured by Method 21 of 40 CFR Part 60, Appendix A after it is successfully repaired or determined to be nonrepairable.
- (v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

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(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (c)(10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in § 265.1032 including supporting documentation as required by § 265.1034(d)(2) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

§§ 265.1036 -- 265.1049 [Reserved]

Subpart BB -- Air Emission Standards for Equipment Leaks

§ 265.1050 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 265.1).

(b) Except as provided in § 265.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of Part 100, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of § 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Part 100, or

(3) A unit that is exempt from permitting under the provisions of § 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of § 261.6 of these regulations.

(c) Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(d) Equipment that is in vacuum service is excluded from the requirements of § 265.1052 to § 265.1060 if it is identified as required in § 265.1064(g)(5).

(e) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of §§ 265.1052 through 265.1060 of this subpart if it is identified, as required in § 265.1064(g)(6) of this subpart.

Note: The requirements of §§ 265.1052 through 265.1064 apply to equipment associated with hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4 and 265.1(c) are not affected by these requirements.

§ 265.1051 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 264.1031, the Act, and Parts 260 through 267.

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§ 265.1052 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

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- (b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.
 - (2) If there are indications of liquids dripping from the pump seal, a leak is detected.
- (c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.
 - (2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.
- (d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a), provided the following requirements are met:
 - (1) Each dual mechanical seal system must be:
 - (i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or
 - (ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § 265.1060, or
 - (iii) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.
 - (2) The barrier fluid system must not be a hazardous waste with organic concentrations 10 percent or greater by weight.
 - (3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system or both.
 - (4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.
 - (5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.
 - (ii) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.
 - (6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

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(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(iii) A first attempt at repair (e.g., relapping the seal) shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 265.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in § 265.1063(c).

(3) Must be tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times as requested by the Director.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 265.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.

§ 265.1053 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 265.1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

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- (d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.
- (e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.
- (2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system or both.
- (f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.
- (g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.
- (2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.
- (h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § 265.1060, except as provided in paragraph (i) of this section.
- (i) Any compressor that is designated, as described in § 265.1064(g)(2), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:
- (1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).
- (2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Director.

§ 265.1054 Standards: Pressure relief devices in gas/vapor service.

- (a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).

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(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 265.1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 265.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.

§ 265.1055 Standards: Sampling connecting systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of § 265.1085 through § 265.1087 of this subpart or a control device that complies with the requirements of § 265.1060 of this subpart.

(c) In situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

§ 265.1056 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

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- (2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.
- (b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.
- (c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

§ 265.1057 Standards: Valves in gas/vapor service or in light liquid service.

- (a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section, and §§ 265.1061 and 265.1062.
- (b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.
- (c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.
 - (2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.
- (d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 265.1059.
 - (2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.
- (e) First attempts at repair include, but are not limited to, the following best practices where practicable:
 - (1) Tightening of bonnet bolts.
 - (2) Replacement of bonnet bolts.
 - (3) Tightening of packing gland nuts.
 - (4) Injection of lubricant into lubricated packing.

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(f) Any valve that is designated, as described in § 265.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

- (1) Has no external actuating mechanism in contact with the hazardous waste stream.
- (2) Is operated with emissions less than 500 ppm above background as determined by the method specified in § 265.1063(c).
- (3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Director.

(g) Any valve that is designated, as described in § 265.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

- (1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.
- (2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in § 265.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

- (1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.
- (2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990.
- (3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

§ 265.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in § 265.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

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(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 265.1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of § 265.1064 of this subpart.

§ 265.1059 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are affected, the purged material is collected and destroyed or recovered in a control device complying with § 265.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair

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beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than 6 months after the first hazardous waste management unit shutdown.

§ 265.1060 Standards: Closed-vent systems and control devices.

(a) Owners or operators of closed-vent systems and control devices subject to this subpart shall comply with the provisions of § 265.1033 of this part.

(b)(1) The owner or operator of an existing facility who can not install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any units that begin operation after December 21, 1990, and are subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997 due to an action other than those described in paragraph (b)(3) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

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**§ 265.1061 Alternative standards for valves in gas/vapor service or in light liquid service:
percentage of valves allowed to leak.**

- (a) An owner or operator subject to the requirements of § 265.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard which allows no greater than 2 percent of the valves to leak.
- (b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:
 - (1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Director.
 - (2) If a valve leak is detected, it shall be repaired in accordance with § 265.1057(d) and (e).
- (c) Performance tests shall be conducted in the following manner:
 - (1) All valves subject to the requirements in § 265.1057 within the hazardous waste management unit shall be monitored within 1 week by the methods specified in § 265.1063(b).
 - (2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.
 - (3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in § 265.1057 for which leaks are detected by the total number of valves subject to the requirements in § 265.1057 within the hazardous waste management unit.

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**§ 265.1062 Alternative standards for valves in gas/vapor service or in light liquid service:
skip period leak detection and repair.**

(a) An owner or operator subject to the requirements of § 265.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b)(2) and (3) of this section.

(b)(1) An owner or operator shall comply with the requirements for valves, as described in § 265.1057, except as described in paragraphs (b)(2) and (b)(3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in § 265.1057 of this subpart..

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in § 265.1057 of this subpart.

(4) If the percentage of valves leaking is greater than 2 percent, the owner or operators shall monitor monthly in compliance with the requirements in § 265.1057, but may again elect to use this section after meeting the requirements of § 265.1057(c)(1).

§ 265.1063 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in §§ 265.1052 through 265.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

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- (4) Calibration gases shall be:
- (i) Zero air (less than 10 ppm of hydrocarbon in air).
 - (ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.
- (5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
- (c) When equipment is tested for compliance with no detectable emissions, as required in §§ 265.1052(e), 265.1053(i), 265.1054, and 265.1057(f), the test shall comply with the following requirements:
- (1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.
 - (2) The background level shall be determined, as set forth in Reference Method 21.
 - (3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
 - (4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.
- (d) In accordance with the waste analysis plan required by § 265.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:
- (1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 (incorporated by reference under § 260.11);
 - (2) Method 9060 or 8260 of SW-846 (incorporated by reference under § 260.11); or
 - (3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

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(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (d)(2) of this section.

(f) When an owner or operator and the Director do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in paragraph (d)(1) or (d)(2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86 (incorporated by reference under § 260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of § 265.1034(c)(1) through (c)(4).

§ 265.1064 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For each piece of equipment to which Subpart BB of Part 265 applies:

(i) Equipment identification number and hazardous waste management unit identification.

(ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(iii) Type of equipment (e.g., a pump or pipeline valve).

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- (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment.
 - (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).
 - (vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").
- (2) For facilities that comply with the provisions of § 265.1033(a)(2), an implementation schedule as specified in § 265.1033(a)(2).
- (3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in § 265.1035(b)(3).
- (4) Documentation of compliance with § 265.1060, including the detailed design documentation or performance test results specified in § 265.1035(b)(4).
- (c) When each leak is detected as specified in §§ 265.1052, 265.1053, 265.1057, and 265.1058, the following requirements apply:
- (1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with § 265.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.
 - (2) The identification on equipment, except on a valve, may be removed after it has been repaired.
 - (3) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in § 265.1057(c) and no leak has been detected during those 2 months.
- (d) When each leak is detected as specified in §§ 265.1052, 265.1053, 265.1057, and 265.1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:
- (1) The instrument and operator identification numbers and the equipment identification number.
 - (2) The date evidence of a potential leak was found in accordance with § 265.1058(a).
 - (3) The date the leak was detected and the dates of each attempt to repair the leak.
 - (4) Repair methods applied in each attempt to repair the leak.

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- (5) "Above 10,000" if the maximum instrument reading measured by the methods specified in § 265.1063(b) after each repair attempt is equal to or greater than 10,000 ppm.
 - (6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.
 - (7) Documentation supporting the delay of repair of a valve in compliance with § 265.1059(c).
 - (8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.
 - (9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.
 - (10) The date of successful repair of the leak.
- (e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of § 265.1060 shall be recorded and kept up-to-date in the facility operating record as specified in § 265.1035(c). Design documentation is specified in § 265.1035(c)(1) and (c)(2) and monitoring, operating, and inspection information in § 265.1035 (c)(3) through (c)(8).
- (f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.
- (g) The following information pertaining to all equipment subject to the requirements in §§ 265.1052 through 265.1060 shall be recorded in a log that is kept in the facility operating record:
- (1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.
 - (2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 265.1052(e), 265.1053(i), and 265.1057(f).
 - (ii) The designation of this equipment as subject to the requirements of §§ 265.1052(e), 265.1053(i), or 265.1057(f) shall be signed by the owner or operator.
 - (3) A list of equipment identification numbers for pressure relief devices required to comply with § 265.1054(a).

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- (4)(i) The dates of each compliance test required in §§ 265.1052(e), 265.1053(i), 265.1054, and 265.1057(f).
 - (ii) The background level measured during each compliance test.
 - (iii) The maximum instrument reading measured at the equipment during each compliance test.
- (5) A list of identification numbers for equipment in vacuum service.
- (6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.
- (h) The following information pertaining to all valves subject to the requirements of § 265.1057(g) and (h) shall be recorded in a log that is kept in the facility operating record:
 - (1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.
 - (2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.
- (i) The following information shall be recorded in the facility operating record for valves complying with § 265.1062:
 - (1) A schedule of monitoring.
 - (2) The percent of valves found leaking during each monitoring period.
- (j) The following information shall be recorded in a log that is kept in the facility operating record:
 - (1) Criteria required in §§ 265.1052(d)(5)(ii) and 265.1053(e)(2) and an explanation of the criteria.
 - (2) Any changes to these criteria and the reasons for the changes.
- (k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:
 - (1) An analysis determining the design capacity of the hazardous waste management unit.

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(2) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in §§ 265.1052 through 265.1060 and an analysis determining whether these hazardous wastes are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in §§ 265.1052 through 265.1060. The record shall include supporting documentation as required by § 265.1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in §§ 265.1052 through 265.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only 3 years.

(m) The owner or operator of any facility with equipment that is subject to this subpart and to leak detection, monitoring, and repair requirements under regulations at 40 CFR Part 60, Part 61, or Part 63, may elect to determine compliance with this subpart either by documentation pursuant to § 265.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR Part 60, Part 61, or Part 63 pursuant to the relevant provisions of the regulations at 40 CFR Part 60, Part 61, or Part 63. The documentation of compliance under regulation at 40 CFR Part 60, Part 61, or Part 63 shall be kept with or made readily available with the facility operating record.

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Subpart DD -- Containment Buildings

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

- (a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the units, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;
- (b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit;
- (c) If the unit is used to manage liquids, has:
 - (1) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;
 - (2) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and
 - (3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under § 265.1101(b)(4);
- (d) Has controls as needed to prevent fugitive dust emissions; and
- (e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

§ 265.1101 Design and operating standards.

(a) All containment buildings must comply with the following design standards:

(1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system if required under paragraph (b) of this section, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The Department will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this paragraph. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(i) They provide an effective barrier against fugitive dust emissions under paragraph (c)(1)(iv); and

(ii) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

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(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g. a geomembrane covered by a concrete wear surface).

(2) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building:

(i) The primary barrier must be sloped to drain liquids to the associated collection system; and

(ii) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of 1 percent or more; and

(B) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more.

(ii) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 265.193(e)(1). In addition, the containment building must meet the requirements of § 265.193 (b) and (c) to be considered an acceptable secondary containment system for a tank.)

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(4) The State shall recognize any delay granted to existing units, other than 90-day generator units, that received approval from EPA by meeting the requirements of 40 CFR 265.1101(b)(4).

(c) Owners or operators of all containment buildings must:

(1) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

(i) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

(iv) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions. In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices. This state of no visible emissions must be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit.

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has led to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

(A) Enter a record of the discovery in the facility operating record;

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(B) Immediately remove the portion of the containment building affected by the condition from service;

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(D) Within 7 days after the discovery of the condition, notify the Director of the condition, and within 14 working days, provide a written notice to the Director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The Director will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing all repairs and cleanup the owner or operator must notify the Director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (c)(3)(i)(D) of this section.

(4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For containment building that contains both areas with and without secondary containment, the owner or operator must:

(1) Design and operate each area in accordance with the requirements enumerated in paragraphs (a) through (c) of this section;

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of this subpart, the Director may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

§ 265.1102 Closure and post-closure care.

(a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of these regulations applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in Subpart G of this part, and the requirements of Part 266 of these regulations.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he/she must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 265.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subpart G of this part, and the requirements of Part 266 of these regulations.

§§ 265.1103 through 265.1110 [Reserved]

INSERT APPENDIX.265 HERE